



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, 4 March 2024



Co-funded by 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 Council of Europe legal system regulating
asylum and immigration**

TRALIM 3 Athens, 4 March 2024



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5. Relevant case law on other asylum matters

Applying CoE instruments in the asylum context

- ❖ **Conventions include:** European Convention on Human Rights (ECHR); European Social Charter; Convention on preventing and combating violence against women (Istanbul Convention); Convention on Action against Trafficking
- ❖ **Bodies include:** European Court of Human Rights (ECtHR); CoE Commissioner for Human Rights; Committee for the Prevention of Torture (CPT); European Committee on Social Rights (ECSR)

Intersections with the EU legal order

- ❖ EU Charter corollary provisions at least with same “meaning and scope” to ECHR: [Art 52\(3\) Charter](#)
- ❖ EU common policy on asylum abides by 1951 Refugee Convention “and other relevant treaties” binding on the State or the EU: [Art 78\(1\) TFEU](#), [CJEU C-621/21 *Intervyuirasht organ na DAB pri MS*, paras 46-47](#)
- ❖ EU law informs reading of ECHR obligations: [Art 53 ECHR](#); [*Suso Musa v. Malta* no. 42337/12, para 97](#)
- ❖ Execution of ECtHR judgments part of EU monitoring in annual Rule of Law Report

The ECHR and the evolving role of the Strasbourg Court in immigration cases

New rules on handling of the Court's immigration caseload

- ❖ Three-judge “Immigration Committee” set up in 2023 under the Fifth Section of the ECtHR
- ❖ Unanimous Committee decisions on immigration cases falling within “well-established case law”
- ❖ Examples: *E.F. v. Greece* no.16127/20; *T.K. v. Greece* no. 16112/20; *O.Q. v. Hungary* no. 58680/19

Rule 39 interim measures to prevent “irreparable harm” pending outcome of proceedings

- ❖ Top recipient in 2023: Belgium – reception conditions for asylum seekers. Note *Camara v. Belgium* no. 49255/22 on Article 6 ECHR breach due to failure to comply with domestic rulings
- ❖ Runner-up in 2023: Greece – prevention of push backs and provision of immediate assistance

Adjudication of asylum claims: Articles 3 and 13 ECHR

Assessment of evidence in the country of destination

Relevant to merits (country of origin) & admissibility (e.g. Dublin, safe third country)

- ❖ Rigorous assessment of *refoulement* risks: *S.H. v. Malta* no. 37241/21, para 79; *Ilias & Ahmed v. Hungary* no. 47287/15, para 163
- ❖ Assessment must be adequate and sufficiently supported by evidence: *S.H.*, para 100; *M.S.S. v. Belgium & Greece* no. 30696/09, paras 286-287; *F.G. v. Sweden* no. 43611/11, para 127
- ❖ Inherent degree of speculation: *Paposhvili v. Belgium* no. 41738/10, para 178
- ❖ Authoritative sources e.g. UNHCR, CoE, EU bodies are in principle considered to be known: *Ilias & Ahmed*, para 141; *M.S.S.*, paras 346-350
- ❖ Diplomatic assurances not conclusive: must be specific, monitored against evidence & issued by reliable actor: *Othman v. United Kingdom* no. 8139/09, para 189

Adjudication of asylum claims: Articles 3 and 13 ECHR

Assessment of credibility of the individual applicant

- ❖ Burden of proof on the State to establish the facts where there is a strong indication of torture e.g. through medical report: *R.C. v. Sweden* no. 41827/07, para 53
- ❖ Benefit of the doubt for statements of the applicant if general credibility established: *S.H.*, para 85, *F.G.*, para 93 [Article 4(5) QD]

Procedural safeguards

- ❖ Legal representation and context of interview (e.g. detention) relevant to State expectations of applicant's narration: *S.H.*, para 84
- ❖ Remedies must carry automatic suspensive effect where *refoulement* risks arise: *S.H.*, para 79; *M.S.S.*, para 293 [CJEU C-181/16 *Gnandi*]

Barriers to removal: Articles 3 and 8 ECHR

Medical cases: Article 3 ECHR

- ❖ Serious risk of severe and rapid deterioration of health of health leading to swift and certain death: *Paposhvili, para 148* [CJEU C-578/16 PPU C.K.; C-353/16 MP]
- ❖ Medical cases may qualify for subsidiary protection on “serious harm” grounds [Article 15 QD]

Private and family life: Article 8 ECHR

- ❖ Subsidiarity and deference to domestic proceedings: *Z.A. v. Ireland no. 19632/20*
- ❖ State of health may also impact private & family life: *Paposhvili, para 225*

Relevant case law on other asylum matters

- ❖ Age assessment of unaccompanied children: *Darboe & Camara v. Italy* no. 5797/17 on breach of Art 8 ECHR
- ❖ Travel documents for refugees: *S.E. v. Serbia* no. 61365/16 on breach of Art 2 Protocol 4 ECHR
- ❖ Family reunification: *M.T. v. Sweden* no. 22105/18 on no breach of Art 8 ECHR
- ❖ Push backs, use of force & effectiveness of investigations: *M.H. v. Croatia* no. 15670/18 on breach of Art 2, 3 ECHR and Art 4 Protocol 4 ECHR; *Alkhatib v. Greece* no. 3566/16 and *Safi v. Greece* no. 5418/15 on breach of Art 2 ECHR; *Shahzad v. Hungary (no 2)* no. 37967/18 on breach of Art 3 ECHR

And of course constant case law on reception and detention conditions



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

Julia Hull

**Legal Framework on Asylum and Immigration in
Ireland**

TRALIM 3 Athens, 4 March 2024



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Legal Framework on Asylum and Immigration in Ireland

Main Legislative Provisions:

International Protection Act 2015

European Union Dublin System (Regulations) 2018

European Communities (Reception Conditions)
Regulations 2018

Immigration Acts 2003, 2004 and 2009

Illegal Immigrants (Trafficking Act) 2000

Criminal Law (Human Trafficking Act 2008

Human Trafficking (Amendment)Act 2013

Irish Nationality and Citizenship Act 1956

Legal Framework on Asylum and Immigration in Ireland

Relevant Government Departments:

Department of Justice- Immigration Service Delivery

International Protection Office

International Protection Appeals Tribunal

Ministerial Decisions Unit (Department of Justice)

Garda National Immigration Bureau

Legal Framework on Asylum and Immigration in Ireland

International Protection Act 2015

- Single Procedure - (Refugee status/Subsidiary Protection/Recommendation on Permission to Remain)
- Application –s 13(1)
- Inadmissibility /Dublin Regulation – Appeal s21
- Questionnaire -s 15(5)
- Personal Interview- s35(1)
- Decision -s39
- Appeal -s41
- Permission to Remain Application - s49 /Refoulement –s50
- Deportation Order – s51
- Subsequent Applications – s22
- Revocation –s52

Legal Framework on Asylum and Immigration in Ireland

Training of Lawyers on EU
Law relating to Asylum
and Immigration 3

 #TRALIM3

Specific cases

Unaccompanied minors / age disputed minors section 14 IPA 2015

Safe Countries of Origin

Vulnerability assessments section 8(1) IPA 2015

Medico –Legal Reports

Medical Assessments

Victims of Human Trafficking

Legal Framework on Asylum and Immigration in Ireland

- Inadmissability decisions –S 21 ECJ Case Law / ECHR
- Dublin Regulation – humanitarian submissions Article 17(1) of the Dublin III Regulation
- Dublin Regulation appeal

S.I. No. 62/2018 - European Union (Dublin System) Regulations 2018
REGULATION (EU) No 604/2013

Legal Framework on Asylum and Immigration in Ireland

Obligations on Applicant's

S 15(5)

An application for international protection shall be made in the prescribed form and shall include—

- (a) all details of the grounds for the application, and
- (b) all information that would, in the event that *section 49, 50, 56 or 57* were to apply (PTR, Refoulement, Family Reunification) to the applicant, be relevant to the decision of the Minister under the section concerned.

S 27

(1) It shall be the duty of an applicant—

- (a) to submit as soon as reasonably practicable all the information needed to substantiate his or her application,
- (b) to co-operate in the examination of his or her application and in the determination of his or her appeal in relation to that application, if any, and
- (c) to comply with all of the other obligations under *Parts 3 to 6* of an applicant in relation to his or her application.

(2) The information referred to in *subsection (1)* consists of statements by the applicant, and all documentation at his or her disposal, regarding the elements, referred to in *section 28(3)*, of his or her application

Legal Framework on Asylum and Immigration in Ireland

Failure by applicant to cooperate s38

- (1) Not attending for an interview – 3 working days to provide an explanation
- (2) Left the state/ not notified of a change of address /not complied with any conditions relating to residence – 10 working days to provide an explanation

Subsequent Applications for IP – permission from the Minister plus appeal (s22)

Legal Framework on Asylum and Immigration in Ireland

Decision from IPO

Decision – refugee status/subsidiary protection s39

Recommendation – Permission to Remain s49(4)

Negative decision re refugee status /subsidiary protection

- Lodge appeal to IPAT within relevant time limit

Legal Framework on Asylum and Immigration in Ireland

Appeals

- Substantive Appeals – 15 working days
- Other appeals– 10 working days
- Notice of Appeal –
 - Legal Submissions
 - addressing credibility issues
 - Country of Origin Information
 - Witnesses
 - Redacted decisions
- Late appeals
- Signing the form
- Remote hearings
- Oral Hearings/ Hearing on paper only

Legal Framework on Asylum and Immigration in Ireland

Positive decisions

- Refugee /Subsidiary Protection Declaration – s47
- Refugee Status / Subsidiary Protection
 - Stamp 4 visa 3 years
 - Family reunification
- Application for Citizenship –
 - Refugee status backdated to date of application – 3 years residency
 - Subsidiary Protection – 5 years
- Applications on behalf of children – unaccompanied minors

Legal Framework on Asylum and Immigration in Ireland

- Negative decisions –
- Update the PTR (5 working days) (Art 8 ECHR /Refoulement issues)
- Deportation Orders – change in circs
- Delays in system

Legal Framework on Asylum and Immigration in Ireland

- Negative decisions –
- PTR Review -refoulement issues s 50
- Deportation Orders

Legal Framework on Asylum and Immigration in Ireland

- Other types of permission

Parent of an EU Citizen Child (Zambrano)

Partner /Spouse of EU Citizen (freedom of movement)

Permission granted under regularisation scheme and PTR application under s 49

Applications for Citizenship (Naturalisation, Descent, Irish Associations, Birth)

Legal Framework on Asylum and Immigration in Ireland

- Judicial Review – Asylum list in the High Court –

Hct Practice direction HC81

Legal Framework on Asylum and Immigration in Ireland

Numbers seeking International Protection

2018 – 2020 10,030

2021 -2649

2022- 13651

2023 -13,277 Jan 2024 - 1773

2020 – Catherine Day Report /White Paper to end Direct Provision

2021 Regularisation of Long Term Undocumented Migrants Scheme

2022/2023 Temporary Protection Directive – Ukraine

Accommodation



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

Katerina Charitou

**Legal framework on asylum and immigration in
Cyprus**

TRALIM 3 Athens, 4 March 2024



Co-funded by the European Union

OVERVIEW

- **Immigration and asylum high on political agenda**

- **The particularity of Cyprus:**

Member of part of the Schengen *acquis* (*Schengen Information System*) however:

Division by the Green Line: entry point of most newly-arrived asylum seekers

No land border with another EU member – state

Council Regulation (EC) No 866/2004 of 29 April 2004 on a regime under Article 2 of Protocol 10 to the Act of Accession (or ‘Green Line Regulation’)

- Non-government-controlled areas (North): EU law does not apply → no asylum procedures // unclear situation as to whether asylum seekers allowed to cross
- Government-controlled areas (South)

IMMIGRATION

- Aliens and Migration Law Cap.105
- Civil Registry Law (141(I)/2000)
- Law of EU citizens and members of their families (7(I)/2007)
- Administrative Court Law
- Administrative Court Regulations

Legal Status v. “prohibited migrants”

Returns

Citizenship eligibility

Administrative Court

General Principles of Administrative Law

Entry

Rights

Detention

Judicial Protection

Legal Aid

ASYLUM

- Refugee Law
- IPAC Law
- IPAC Regulations
- Legal Aid

Access to asylum procedures

Reception Conditions

Asylum procedures/ RSD

Rights of those granted international protection

International Protection Administrative Court

I. IMMIGRATION LEGAL FRAMEWORK

Civil Registry and Migration
Department

Ministry of Interior

ENTRY

- not an absolute right of aliens
- requirements (see also Regulations)
- not allowed to ‘**prohibited migrants**’ (e.g. indigent persons, persons with intellectual or mental disabilities, or communicable diseases, prostitutes, persons convicted with murder or serious crime, with previous illegal stay, prohibited under other laws) – wide discretion [illegally residing TCN]
- v. - categories with right to free movement**

Deportation of prohibited migrants or persons with illegal stay history
Detention may be ordered with the purpose of deportation

ALIENS AND MIGRATION LAW CAP 105

THIRD COUNTRY NATIONALS

Long-term residence
requirements, rights. 18H-18KH

Family unity right and rights
18A-18KH

See also **marriages of convenience, illegal employment provisions**

PERMITS (employment, visitors) -

RETURN DECISIONS*

- individuals susceptible
- non-refoulement
- child’s best interests
- risk of absconding
- exception: 18(4) discretion to provide right to reside for “humanitarian reasons”
- voluntary (7-30 days ‘preparation’) or “removal”
- accompanied by an entry prohibition

DETENTION

- only for the purpose of a return/preparation of removal; reasonable prospect
- risk of absconding, obstruction of return and proportionality
- maximum duration (6) (6+12)
- reexamination every 2 months
- challenged also with a ***habeas corpus*** application (duration)

*Ombudsman – monitoring mechanism for forced returns (CM Decision 74.333)

- **ALIENS AND MIGRATION LAW
CAP 105**
- **ALIENS AND MIGRATION (ENTRY
AND RESIDENCE FOR RESEARCH,
STUDIES, TRAINING, VOLUNTARY
SERVICE, PUPIL EXCHANGE
SCHEMES, EDUCATIONAL
PROJECTS AND AU PAIRING)
7(I)/2019**



- PERMITS**
- employment
 - long-term residents
 - house workers
 - visitors
 - students
 - rest of Directive (EU)
2016/801 categories

EU nationals:

- **LAW ON THE RIGHT OF EU CITIZENS
TO RESIDE AND MOVE FREELY
7(I)/2007**

CIVIL REGISTRY LAW 141(I)/2002

CITIZENSHIP BY NATURALISATION

- adult with full legal capacity – discretion of Minister Table 3: consecutive residency during 12 months immediately preceding application, total of 4 years residency in the RoC in the 7 years preceding the 12 months – good character – intention to reside in RoC – knowledge of language – basic knowledge of contemporary politics and Cyp reality – sufficient funds

CITIZENSHIP BY REGISTRATION

- adult with full legal capacity – discretion of Minister Table 2: consecutive residency during 12 months immediately preceding application, spouse of Cypriot national residing therewith for minimum 3 years in the RoC – good character – intention to reside in RoC

**RENUNCIATION OR DEPRIVATION
OF CITIZENSHIP**

**HONOURABLE CITIZENSHIP
FOR PUBLIC INTEREST
REASONS**

Administrative Court

Established in 2015.

Examines all appeals on the basis of Article 146 of the Constitution against administrative decisions **not** examined by IPAC, therefore immigration law appeals are examined by the Administrative Court.

Examination of points of law **only**. Relevant time of examination is when the decision under appeal was adopted by determining authority.

Effect of a successful appeal: Annulment of decision under appeal (“it disappears” – Article 57 of General Administrative Law Principles Law) and referred back to the deciding authority for re-examination.

Appeals against deportation orders

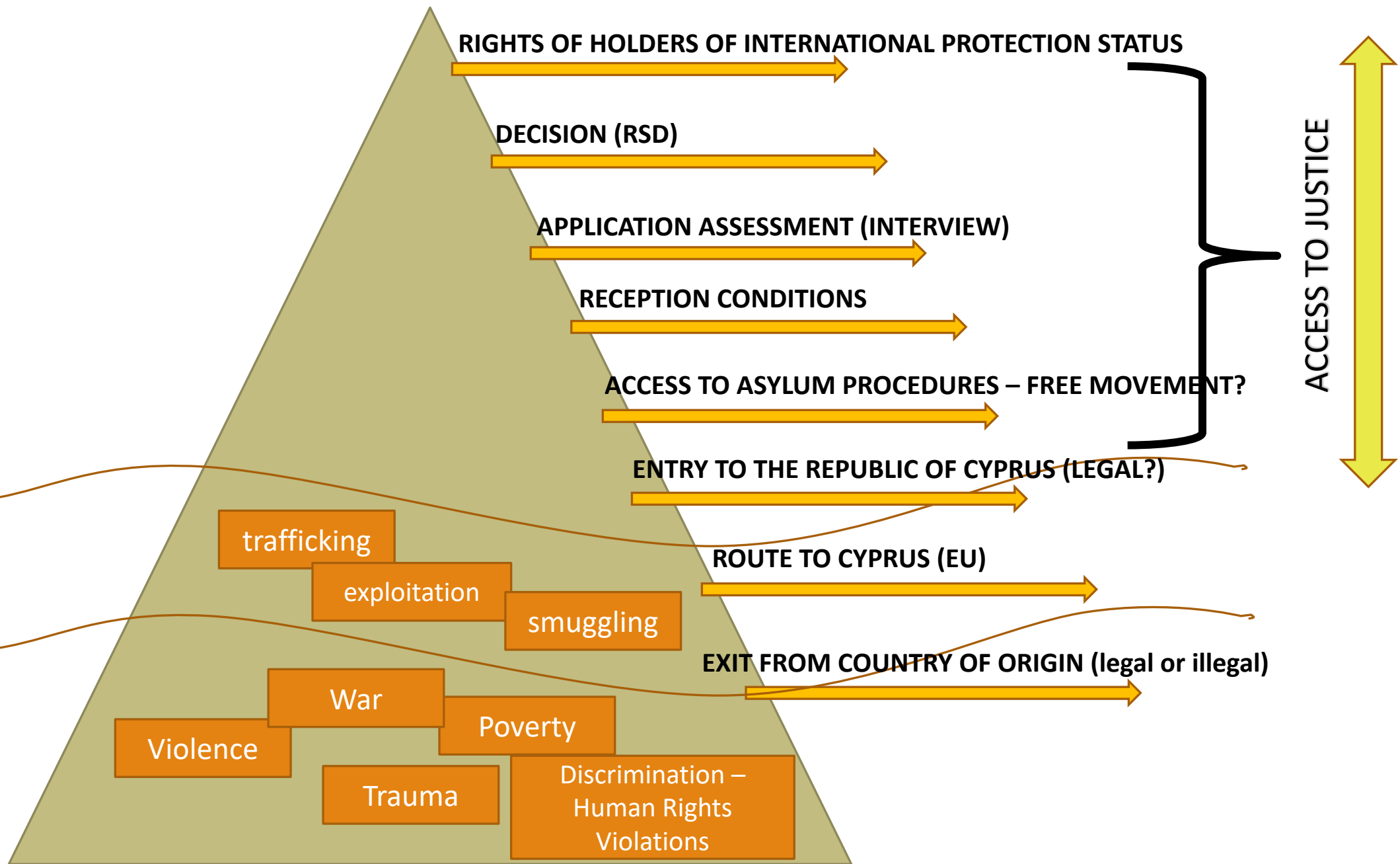
2021 amendment to Administrative Court Law introduces Article 11A – **Automatic suspension of the applicability of an administrative decision under appeal:**

- Para. 1: If a detention order, return decision or removal decision issued on the basis of the Aliens and Migration Law, is appealed, its applicability is enforcement is suspended until the appeal is examined by the Court **if** the Applicant includes in his/her appeal, a claim regarding the violation of the principle of non-refoulement as foreseen under domestic and EU law, and/or claim regarding the violation of Articles 2 and/or 3 of the ECHR, and/or Article 8 of the Constitution and/or Article 2 and/or 4 of EU Charter of Fundamental Rights
- Para. 2: examined under priority and if a detention order is also appealed, must be examined within **30 days**.

II. ASYLUM LEGAL FRAMEWORK

ASYLUM SERVICE

Asylum Reviewing Authority
abolished



* Vulnerability taken into account in all procedures (reception, assessment, justice)

REFUGEE STATUS

*3(1) A person is recognised as a refugee where, owing to a well-founded fear of being persecuted **for reasons of race, religion, nationality or membership of a particular social group or political opinion**, is outside his country of nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside and being outside of the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is not willing to return to it, and to whom section 5 does not apply.*

REFUGEES LAW 6(I)/2000: Legal basis for granting IP status

- **persecution or serious harm**
- **acts of persecution or serious harm**
- **actors of persecution**
- **rights of asylum seekers**
- **reception conditions**
- **rights of recognized refugees or holders of SP**

Termination of international protection

SUBSIDIARY PROTECTION STATUS

*19(1) The Head, by way of a decision, recognises the status of subsidiary protection to any applicant **who is not recognised as a refugee** or to any applicant whose application is clearly **not based on any of the grounds of section 3(1)**, but in respect of whom there are substantial reasons to believe that if the person concerned returns to his country of nationality, he will face a real risk of being subjected to **serious harm**, and is unable, or, owing to such risk, is unwilling to avail himself of the protection of that country."*

Right to reside for refugees and family members (3years – R, 1year – S) renewable at regular intervals

Travel documents

'equal treatment' right of equality and exercise of religious freedoms & duties

**RIGHTS OF
RECOGNISED
REFUGEES OR
HOLDERS OF
SUBSIDIARY
PROTECTION**

Education, social protection, medical treatment sectors: Equal treatment with citizens of the Republic of Cyprus

Access to the labour market & access to social inclusion programs

Same treatment with legally residing migrants access to accommodation/housing, right to assembly, free movement, to have/obtain property and relevant rights

Revocation of status (e.g. in the event of "compelling reasons of public order")

SUBMITTING THE APPLICATION


- At the Aliens and Immigration Unit (AIU) of the Police or at Pournara First Reception Centre for newly-arrived asylum seekers
- Registered within 3 days
- 6 days if the authority receiving the application is not competent to register [The right of access begins from the borders of a country – obligation of first line officers to provide information in relation to the asylum procedure → obligation to submit the application communicated]
- 10 days if there is a large number of simultaneous requests

Right to interpretation

(Article 11)

ACCESS TO ASYLUM PROCEDURE

Can the right to access the asylum procedure be translated into a right of entry to the host/asylum country?



Asylum seekers entering irregularly are not subject to punishment solely due to that reason, as long as they present themselves to authorities in good time

(article 7 Refugee Law) → in practice ?

Positive obligation under article 3 ECHR (non-refoulement) : TCNs must have access to a personalized procedure at the borders to examine whether there is an application for international protection or transfer (e.g. to another state) . The omission to secure such access may violate the ECHR (see e.g. Hungarian policy to refoul applicants to Serbia considering it generally “secure” without guarantees to access asylum found to violate article 3 ECHR (para. 161, *Ilias and Ahmed v. Hungary* [GC], 21.11.2019)

Detention?

Status of an “asylum seeker” (article 2 Refugees Law -6(I)/2000)

(“applicant” means a TCN or stateless person who has submitted an application for international protection and this capacity is valid for a period beginning from the submission of such an application until the issuance of a final decision)



“**submission**”, regarding an application, means the **expression/declaration**, to a competent authority, of the wish of a TCN or stateless person to apply for international protection .

«**competent authority**» any administrative or judicial body to which the said intention is declared (e.g. prisons, hospitals, airports, criminal court)

“**final decision**” means decision which sets out whether a TCN or stateless person is recognized as a refugee or receives subsidiary protection and-

(α) **the time-limit** to appeal has expired, or
(β) **the said appeal has been exercised** and a first-degree decision has been issued by the IPAC irrespectively of whether in the meantime the applicant has obtained a right to reside until the relevant judicial decision is issued.

See also: **C-36/2020**, V.L. V. *Ministerio Fiscal*, 25 June 2020’, see IPAC decisions **Δ.K. 115/2021**, 31/1/2022, **Δ.K. 37/2020**, 31/5/2021

Concern every TCN and stateless person who applies for international protection and their family members

Confirmation – Right to reside and move freely in government-controlled areas and access benefits of the Law

Right to live with dignity and respect for fundamental rights (EU Charter)

Material reception conditions- housing, clothing, financial aid

ASYLUM SEEKERS
Reception Conditions
Directive 2013/33/EU
(minimum standards))

Rights not dependent upon a disproportionate obligation to provide evidence

Information about allowances, rights, duties and organizations providing support (legal etc)

! Special provisions for persons with special reception needs– vulnerability (e.g. victims of torture, women, persons with disabilities) - best interests of the child – unaccompanied minors

Medical treatment

Education – Employment in predefined sectors

DETENTION– ALLOWED ONLY UNDER SPECIFIC GROUNDS IN EXCEPTIONAL CIRCUMSTANCES

The Rule: Prohibition of detention of an asylum seeker by virtue of his/her capacity as an asylum seeker

When [ratification of Article 8(3) Directive 2013/33/EU]:

It is not possible to apply effective, less coercive alternative measures (**proportionality principle**) (e.g. showing up at a Police station) (article 9F(3) and

- It is **necessary** further to an **individual assessment by the Minister**, (**necessity principle**) that:

- the applicant is detained in the course of a return procedure *for the preparation of a removal and the Minister substantiates on the basis of objective criteria including that he/she already had the opportunity to access the asylum procedure that there are reasonable grounds to believe that he/ she is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision* (article 9F(2)(d))

- when protection of national security or public order so requires · (article 9F(2)(e))

[**See also** (a) in order to determine or verify identity/ nationality; (b) in order to determine those elements on which the application is based which could not be obtained in the absence of detention [risk of absconding; (c) in order to decide, in the context of a procedure, on the applicant's right to enter the territory]

Strict guarantees (to be informed 'immediately' for legal and the order states the reasons in fact and in law on which it is based) ***Appealable or subject to a habeas corpus**

INDICATIVE RIGHTS DURING THE EXAMINATION

- As a rule (with narrowly interpreted exceptions 13A) an interview must be conducted
Appropriate interpretation
- Only when the relevant facts are specified may a decision be duly informed
- Burden of proof rules (initially → applicant; subsequently → shared [investigative burden])
- Individualised assessment → Assessment of evidence not an automatic exercise
- Attention to vulnerabilities / trauma → special procedural guarantees (e.g. adequate time)
- Right to appropriate and sufficient opportunities to clarify claim particulars
- Obligation to cooperate with the applicant to support his/her claim/ facilitate filing of evidence
- Credibility assessment in view of Country of Origin Information (COI) (requirement to keep an open mind and avoid stereotypical approaches) Free from bias– integrity – protection from prejudice
- Independent, specialized and well trained case-workers – use of expertise
- Respect to fundamental rights (e.g. due administration, respect to dignity, private life, effective judicial protection)
→ Adequately justified decision

RECENT AMENDMENTS OF REFUGEES LAW

2020

- Asylum Service now has the competency to issue a **single** negative and return decision (7-days voluntary return option).
- Automatically suspended until time limit for appealing passes or in the case of appeal, until the Court judgment.

ACCELERATED PROCEDURE: Article 12D of the Refugees Law → can examine under this procedure if one of the reasons foreseen in Articles 12A, 12B, 12Bbis, 12Bthird, 12Bfourth, 12Bfifth, exist. Inter alia:

- Safe country of origin
- Safe third country
- Inadmissible application
- Criteria set out in para. 4 of Article 12D which refer to misleading authorities, presenting false information, acting in bad faith and others.

Para. 2 of Article 12D → interview can be conducted but Article 13A provides for possibility to omit interview if certain conditions are met and this does not preclude the AS from issuing a decision.

Access to Justice

Effective judicial
protection
(Article 47 Charter of
Fundamental Rights
EU)

Right to an effective remedy (recital 25 – Directive 2013/33/EE, article 46(3)(4) Directive 2013/32/EU)

- full and *ex nunc* examination of facts of law and of law especially during the assessment of international protection needs

Reasonable time-limits which do not render it impossible or excessively difficult to exercise this right

Extends to all decisions concerning the provision withdrawal or limitation of advantages in relation to residence and free movement which personally affect the applicants (article 26 Directive 2013/33/EU - including detention)

* **Free legal assistance and representation:** covers only first-instance decisions where there are real chances of success” and “sufficiency of funds” [detention decisions not under real chances of success test]

- *directive compatibility requiring a right to legal support and representation at all stages of the procedure?*

INTERNATIONAL PROTECTION ADMINISTRATIVE COURT (IPAC)- **JURISDICTION**

8TH AMENDMENT OF THE CONSTITUTION OF THE REPUBLIC OF CYPRUS

(LAW OF 2015)

ARTICLE 146

[...]

4. Further to an appeal the Administrative Court may :
[...] (d) amend in whole or in part a decision or an action as the Law sets out in the event of a tax related subject or a decision concerning international protection according to EU law



IPAC Establishment and Operation Law N. 73(I)/2018*

- Judicial review in relation to any appeal submitted pursuant to Article 146 against an act or omission under Refugees Law (**article 11(2)**)

- Judicial review in relation to decisions on international protection under the Refugees Law (article 11(4))

The effect of judicial review → not limited to annulment :

Examination of legality and substance of an administrative decision – *full and ex nunc-*

(i) Of elements of **fact and law**, and

(ii) Eligibility for international protection under Refugees Law και

upholds in whole or in part the decision or annuls and amends the administrative decision

// Article 46(3) Directive 2013/32/EU, *Alheto C-585/16 – 25 July 2018*

! Concerns applications submitted to the responsible authority after the 20 July 2015

- Merits review also concerns detention decisions (*ΔΔΠ1/2019 M.Y.A.L. v. Republic interim decision* dated 26/7/2019, *ΔΔΠ 5/2020 R.S. v. Republic, interim decision dated. 30/7/2019*)

INTERNATIONAL PROTECTION ADMINISTRATIVE COURT (IPAC)- JURISDICTION

FULL AND *EX NUNC* EXAMINATION APPLIED

- New evidence /evidence not included in the application / interview can be considered
- Definitive decision possible without a need to refer the case back to the Asylum Service
- Elements of fact and of law considered
- Regulations allow the bringing into the procedure of new testimonies and/or interviewing of the applicant (Rules 8, 11, Procedural Regulations; Articles 11(3) and 11(5) of IPAC Law)

Time-limits

Article 146(3) of the Cypriot Constitution: general time limit for appealing administrative decisions is 75 days (applies e.g. to an appeal against a decision under the Aliens and Migration Law)

In 2020, constitutional amendment added “*unless a law explicitly foresees a different deadline for exercising an appeal against a decision or omission.*”

Article 12A(1) of IPAC Law: **30 days** time limit for all decisions of the Asylum Service

Para. 2: **15 days** for certain decisions, inter alia: decision after accelerated procedure, inadmissible application, Dublin Regulation transfer decision, detention order.

→ overburdened applicants?

Most notable change:

Rule 3(e): simplified (or “fast-track”) procedure in cases where the decision challenged is issued by virtue of the following articles of the Refugees Law (L. 6(I)/2000):

- **12Bfourth(2)(d)** – concerning subsequent applications that were rejected as inadmissible, because the applicant has not provided/presented new evidence or findings.
- **12Bthird** – safe country of origin

Rule 10: **simplified procedure** for the submission of [“**a testimony**”] new documents and/or elements and straightforward procedure for COI submission.

Rule 4: Court can examine whether the Applicant has conformed with previous IPAC order regarding payment of court fees; Applicant must submit proof of payment in the case of submission of further appeals and if not, the (further) appeal could be rejected

CONSTITUTION OF THE REPUBLIC OF CYPRUS – ARTICLE 146(4)

Legal review of
administrative acts/
omissions: The
Administrative Court[s]
may

- Uphold in whole or in part
- Annul in whole or in part/order the execution to cure an omission
- Amend in whole or in part (tax-related or international protection decisions) according to EU law

146(6)*

Administrative Court

- Law 131(I)/2015
- Examination of points of law only → Annulment → reexamination by administrative authorities
- 75 days

International Protection Administrative Court

- Law 73(I)/2018 – establishment and operation
- *Full and ex nunc* examination
- May recognize IP status
- 30 days (asylum decisions)
- 15 days (detention decisions)

General Principles of
Administrative Law

CHALLENGES

- Short time-limits → danger to file out of time-limits appeals
- Language / delivery of orders
- Legal aid → does not cover second-degree / Supreme Court procedure
 - Detained applicants under the control of detention centres / deprivation of rights (conditions not always appropriate and detention can take place in non-specialized areas
 - Legal aid application can take too long to be examined / access to justice barrier e.g. Airey v. Ireland)
- Conditions of Στερήσεις δικαιωμάτων εντός χώρων κράτησης - Πρόσβαση σε δικηγόρο;
- Vulnerability
- Exercise of jurisdiction of IPAC limited not to order expertise testimony → overburdened advocates?
- Self-represented applicants
- As a rule: Interviews not audio/video recorded

IPAC case-law where IP status was granted

PALESTINIANS

1118/12, **A.B. v. Cyprus Republic, through the Asylum Service**, 5 June 2020

1037/20, **M.S.M.S v. Cyprus Republic, through the Asylum Service**, 2 March 2022

6034/21 **A.M. v. Cyprus Republic, through the Head of the Asylum Service**, 30 September 2022

DDP 148/19, **H.T. and L.T. v. Cyprus Republic, through the Refugee Reviewing Authority**, 8 June 2022

1157/17, **F.J. v. Cyprus Republic, through the Asylum Service**, 30 September 2021
(Somalia)

40/20, **A.B.J. v. Cyprus Republic, through the Asylum Service**, 6 December 2021
(Syria)

220/17, **A.H. v. Cyprus Republic, through the Asylum Service**, 31 August 2022
(Somalia)

959/20 **B.S. v. Cyprus Republic, through the Ministry of Interior, Asylum Service**, 9
January 2023 (Iran)

SUBSIDIARY PROTECTION

418/20, **D.M. v. Cyprus Republic, through the Asylum Service**, 30 August 2021

Thank you!



Article 6B(2)-(5)

For an appeal pursuant to article 146
Constitution

- against an unfavorable decision pursuant to articles 5,12Bbis, 12Bτετράκις, 12Δ ή 13 of Refugees Law
 - against a refusal to examine anew an application pursuant to articles 16B or 16C of Refugees Law
 - against κατά δυσμενούς απόφασης της Αναθεωρητικής Αρχής Προσφύγων
 - κατά απόφασης παύσης ή ανάκλησης καθεστώτος
 - κατά χορήγησης καθεστώτος Σ.Π. και απόρριψης προσφυγικού
- προϋποθέσεις
- πρωτοβάθμια εκδίκαση προσφυγής
 - 'πραγματικές πιθανότητες επιτυχίας' κατά την κρίση του Δικαστηρίου

Οδηγία 2013/32/ΕΕ

- * Δωρεάν νομική συνδρομή και εκπροσώπηση τουλάχιστον πρωτόδικα εάν υπάρχουν 'πραγματικές πιθανότητες επιτυχίας' & ανεπάρκεια πόρων
- * Δικαίωμα νομικής συνδρομής και εκπροσώπησης σε όλα τα στάδια της διαδικασίας

Legal Aid Law 165(I)/2002 N.A. Asylum seekers and holders of an international protection status

Άρθρο 6B(8)

- για προσφυγή για δικαίωμα που χορηγείται δυνάμει του άρθρου 27(1) του Κανονισμού αρ. 604/2013
- προϋποθέσεις
- πρωτοβάθμια διαδικασία
 - πραγματικές πιθανότητες επιτυχίας

ARTICLE 6B(6)-(7)

για προσφυγή δυνάμει του άρθρου 146 του Συντάγματος

- Κατά *οποιασδήποτε* δυσμενούς απόφασης δυνάμει του άρθρου 8(1)(β),(2), 9 μέχρι 9ΚΘ, 10(1B) μέχρι (2Ε) προϋποθέσεις
 - Δωρεάν ΝΑ αναγκαία για διασφάλιση ουσιαστικής πρόσβασης στη δικαιοσύνη
 - πρωτοβάθμια διαδικασία
 - 'πραγματικές πιθανότητες επιτυχίας' κατά την κρίση του Δικαστηρίου
-
- για προσφυγή κατά διοικητικής πράξης που έχει έννομο αποτέλεσμα την κράτηση
 - για αίτηση για έκδοση εντάλματος habeas corpus προς έλεγχο νομιμότητας της διάρκειας της κράτησης
- προϋποθέσεις
- πρωτοβάθμια διαδικασία

ASYLUM SEEKERS
Reception
procedures

Asylum seekers
≠
Illegally residing TCNs

An asylum seeker must not be considered as illegally residing for as long as the examination of his/her international protection is pending and a decision is issued that deprives his/her right to reside (recital 9, Directive 2008/115/EU)

- **Right to reside** until application is examined (art. 9 Directive 2013/32/EU)

- «Stay and free movement» (art. 9Δ Refugee Law)

Right to have their place of residence defined for reasons of public interest, fast processing and effective monitoring of application (article 9E) without obstructing access to the advantages such as reception conditions

Detention is strictly prohibited – only grounds in exceptional circumstances (article 9F(1)(2)(α)-(στ)) where detention is necessary and proportionate

Right to appeal to the IPAC against detention, alternative measures, determination of place of residence
Right to free legal aid – for detention: no requirement to show real success chances

Επίσης:

11(5) Το Διοικητικό Δικαστήριο Διεθνούς Προστασίας **λαμβάνει υπόψη και σχετικά γεγονότα και ισχυρισμούς** του προσφεύγοντος που δεν λήφθηκαν υπόψη κατά την έκδοση της προσβαλλόμενης απόφασης ή πράξης, είτε αυτά είναι προγενέστερα είτε είναι μεταγενέστερα αυτής.

11 (6) Το Διοικητικό Δικαστήριο Διεθνούς Προστασίας δύναται να διατάζει διοικητική αρχή όπως του απαντήσει ερώτημα σχετικό προς το εξεταζόμενο επίδικο θέμα εντός καθοριζόμενης από το δικαστήριο προθεσμίας.

Διαδικαστικοί Κανονισμοί του 2019 (3/2019)

2. Ο Διαδικαστικός Κανονισμός του Ανωτάτου Συνταγματικού Δικαστηρίου 1962, και οι περί της Λειτουργίας του Διοικητικού Δικαστηρίου Διαδικαστικοί Κανονισμοί (Αρ.1) Διαδικαστικοί Κανονισμοί του 2015, **τυγχάνουν εφαρμογής** σε όλες τις προσφυγές που καταχωρούνται στο Διοικητικό Δικαστήριο Διεθνούς Προστασίας από 18.6.2019, με τις αναγκαίες τροποποιήσεις που αναφέρονται στη συνέχεια και κατ' ανάλογη εφαρμογή των δικονομικών κανόνων και πρακτικής που ακολουθούνται και εφαρμόζονται στις ενώπιον του Διοικητικού Δικαστηρίου προσφυγές εκτός αν ήθελε άλλως ορίσει το Δικαστήριο

3. (α) Κάθε προσφυγή καταχωρείται στο αρμόδιο Πρωτοκollητείο με έγγραφη αίτηση, ως το συνημμένο έντυπο αρ. 1 συνοδευόμενη από την προσβαλλόμενη απόφαση και οποιαδήποτε νέα έγγραφα.

7. Το Δικαστήριο δύναται να καθορίζει τη διαδικασία και να εκδίδει οδηγίες κατά περίπτωση αναφορικά με τη λήψη γραπτής ή προφορικής μαρτυρίας ή άλλων αποδεικτικών μέσων, συνεντεύξεων του αιτητή ασύλου ή δικαιούχου διεθνούς προστασίας και άλλων διαδικασιών σύμφωνα με τον Περί Προσφύγων Νόμο αρ. 6(Ι)/2000 ως εκάστοτε τροποποιείται και τις οδηγίες της Ευρωπαϊκής Υπηρεσίας Υποστήριξης για το Άσυλο,(Ε.Υ.Υ.Α) όπως ήθελε κρίνει ορθό και δίκαιο υπό τις περιστάσεις

10. Νέα έγγραφα και/ή επιπρόσθετα στοιχεία και/ή οποιαδήποτε επιπρόσθετη μαρτυρία να προσκομίζεται στο Δικαστήριο το συντομότερο δυνατόν, και εν πάση περιπτώση όχι κατά τις διευκρινίσεις ή μεταγενέστερα, εκτός αν πρόκειται για στοιχεία τα οποία ο αιτητής, άνευ δικής του υπαιτιότητας, αδυνατούσε να υποβάλει κατά την πρωτοβάθμια εξέταση της αίτησης του. Το Δικαστήριο δύναται να αποδεκτεί τέτοια μαρτυρία μόνο σε περιπτώσεις που κρίνει ότι τα εν λόγω στοιχεία ή πορίσματα αυξάνουν σημαντικά τις πιθανότητες χορήγησης στον αιτητή διεθνούς προστασίας.