



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

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**The Council of Europe legal system regulating
asylum and immigration: instruments and case law**

TRALIM 3 Nicosia, 20 February 2023



Co-funded the European Union

Legal framework in the Council of Europe

- *European Convention on Human Rights (ECHR) of 1950*
 - *Case-law of the European Court of Human Rights (ECtHR)*
- *European Social Charter (revised) 1996*
 - **Article 19:** the right of migrant workers and their families to protection and assistance (applicable only to lawfully resident aliens with a regular job)

The system established by the ECHR

- **Few provisions expressly refer to aliens:**
 - **Article 5, § 1(f) >>>** allows arrest/detention of a person to prevent them from unauthorised entering a territory or with a view to deportation/extradition
 - **Article 4, Protocol No. 4 >>>** prohibition of collective expulsions of aliens
 - **Article 1, Protocol No. 7 >>>** procedural guarantees in case of expulsion of aliens (lawfully resident in the territory)
- **There are no specific provisions on the right to asylum** (≠ Charter of Fundamental Rights of the European Union >> Article 18)

The European Convention on Human Rights (ECHR)

Broad case law of the ECtHR on asylum and migration, in particular regarding the following articles of the Convention:

- **Article 2 ECHR:** « Right to life » *Rantsev; F.G.; Alhowais*
- **Article 3 ECHR:** « Prohibition of torture » *M.S.S.; Saadi ; Ilias & Ahmed ; M.N.*
- **Article 4 ECHR:** « Prohibition of slavery and forced labour » *Rantsev; Chowdury*
- **Article 5 ECHR:** « Right to liberty and security » *Khlaifia; Ilias & Ahmed; Sea Watch*
- **Article 8 ECHR:** « Right to respect for private and family life » *Ramadan; Narjis*
- **Article 13 ECHR:** « Right to an effective remedy » *Hirsi ; M.S.S.; N.D. & N.T*
- **Article 14 ECHR:** « Prohibition of discrimination » *Biao; Ponomaryov*

ECtHR Case law

« Protection **par ricochet** » technique

- The entry of third-country nationals into the territory is not expressly regulated in the ECHR (States have the right to control the entry, residence and deportation of aliens) but...
- The case law has underlined several important limitations, starting from the extradition hypothesis >>> principle of *non refoulement*
 - Need for **protection from indirect extradition, expulsion or *refoulement***, not only in the country of destination but also in third receiving countries
 - The principle of *non refoulement* includes as well some dangerous situations resulting from acts/facts not directly attributable to the country of destination (the danger is sufficient in itself)

See: *Soering v. UK* (1989); *Cruz Varas v. Sweden* (1991); *Chahal v. UK* (1996)

ECtHR Case law

Saadi v. Italy [GC], 2008 (UK third-party intervention)

Violation of Article 3 ECHR

Mr Saadi is a Tunisian national with charges of international terrorism

- ✓ The application concerned the possible deportation of the applicant to Tunisia, where he claimed to have been sentenced *in absentia* in 2005
- ✓ Italian Minister of the Interior ordered him to be deported to Tunisia cause he was a possible threat to national security and had an active role in fundamentalist Islamic cells
- Substantial grounds have been shown for believing that there was a risk that the applicant would be subjected to ill-treatment in the receiving country
- The Court, even if not underestimating the danger of terrorism and taking care that States were facing considerable difficulties in protecting their communities from terrorist violence, stated that these consideration should not call into question the absolute nature of Article 3

ECtHR Case law: migration

Rantsev v. Cyprus and Russia, 2010

Facts:

- ✓ the applicant's daughter, a Russian national, had died in unexplained circumstances after falling from a window of a private property in Cyprus, a few days after she had arrived on a “cabaret-artiste” visa.

Law:

- The Court considered the evidence of trafficking in Cyprus and the concerns expressed in various reports that Cypriot immigration policy and legislative shortcomings were encouraging the trafficking of women to Cyprus through “artiste” visas.
- Cyprus failed to comply with its **positive obligations under Article 4 ECHR** because its regime of “artiste visas” did not afford to the applicant's daughter practical and effective protection against trafficking and exploitation
- procedural obligation to conduct an effective investigation into the death of the applicant's daughter >
Violation of Article 2 ECHR, procedural limb

See also: *Chowdury v. Greece* (2017)

ECtHR Case law: asylum

M.S.S. v. Belgium and Greece [GC], 2011

Violation of Article 3 ECHR by Greece on 2 aspects:

- **Degrading detention conditions**
 - **Degrading life conditions (contrary to the EU Reception Conditions Directive)**
- “the Court considers that the Greek authorities have not had due regard to the applicant’s vulnerability as an asylum-seeker and must be held responsible, because of their inaction, for the situation in which he has found himself for several months, living on the street, with no resources or access to sanitary facilities, and without any means of providing for his essential needs. The Court considers that the applicant has been the victim of humiliating treatment showing a lack of respect for his dignity” (§ 263)*

Violation of Article 13 ECHR: no remedy for systematic deficiencies in the Greek asylum system

ECtHR Case law: asylum

M.S.S. v. Belgium and Greece [GC], 2011

Violation of Articles 3 and 13 ECHR by the Belgian authorities:

- Belgium meaningfully applied the Dublin Regulation by requesting Greece to take charge of the asylum seeker despite knowing that the latter would be subjected to inhuman and degrading treatment (due to the *systemic failure* of the Greek asylum system)
- Systemic flaws of the Greek asylum system would lead to a risk of subsequent deportation to the country of origin (chain of *refoulement*)
- Lack of an effective remedy to challenge the deportation order

See also: CJEU [GC], *N.S. v. UK*, C-411-10 (2011)

ECtHR Case law: migration

Ponomaryov v. Bulgaria, 2011

FACTS:

- ✓ The applicants were two students living with their mother in Bulgaria. Only the mother held a permanent residence permit while the applicants were entitled to reside in Bulgaria as family members until they reached the age of majority
- ✓ Once they reached majority age, the applicants had to apply for a residence permit of their own. In the meantime, they were no longer entitled to reside on the basis of their mother's permit and would have had to pay a school fee in order to continue attending classes and obtain a diploma
- ✓ In their application to the ECtHR, the applicants argued that they were victims of discrimination because they were required to pay to continue their secondary education in Bulgaria, unlike Bulgarian citizens and aliens with long-term residence permits
- ✓ Hence, the applicants were required to pay school fees solely on account of their nationality and migrant status.

ECtHR Case law: migration

Ponomaryov v. Bulgaria, 2011

Violation of Article 14 ECHR, in conjunction with Article 2 Prot. No. 1:

- Education enjoys direct protection under the Convention, being guaranteed by **Article 2 Prot. No. 1 to the ECHR.**
- More and more countries are moving toward the notion of « knowledge-based » societies >>> secondary education is of increasing importance for the development of the individual and society as a whole.
- The applicants were lawfully living in Bulgaria. The authorities had not proposed objections to their stay in the country. In addition, they had taken steps to obtain permanent residence permits.
- They had not sought to abuse the Bulgarian educational system in any way, were fully integrated into Bulgarian society, and spoke Bulgarian fluently.
- There was no justification for school fees to be imposed on the applicants.

ECtHR Case law: asylum



Hirsi Jamaa and Others v. Italy [GC], 2012

Facts:

- ✓ New Italian policy of push back at the high seas (2009-2011)
- ✓ 200 migrants intercepted at the high seas by the Italian authorities and returned to Libya in accordance with a bilateral agreement to fight against irregular migration;
- ✓ applicants have been given no information by the Italian military personnel, who had led them to believe that they were being taken to Italy and had not informed them as to their asylum rights and the procedure;
- ✓ 11 Somali nationals and 13 Eritreans lodged an application to the ECtHR

ECtHR Case law: asylum

Hirsi Jamaa and Others v. Italy [GC], 2012

Law:

- Question of **jurisdiction under Article 1**: acts performed outside Italian territory, but exercise of jurisdiction >>> the authorities exercised control and authority over individuals *de jure and de facto*
- **Violation of Article 3 ECHR**: Risk of suffering ill-treatment in Libya + Risk of suffering ill-treatment in the applicants' country of origin
- **Violation of Art. 4, Prot. No. 4** >>> second time that the Court recognised a violation after *Conka v. Belgium* : before expulsion, each individual must be duly and individually examined about their personal position
- **Violation of Art. 13 ECHR**: applicants were not assured the right to an effective remedy to protect their rights

ECtHR Case law: migration

Ramadan v. Malta, 2016

Facts:

- ✓ The applicant was born in Egypt but he is (apparently) stateless;
- ✓ Acquired Maltese citizenship following his marriage to a Maltese national in 1993, and had to renounce to the Egyptian citizenship;
- ✓ Maltese authorities then revoked Mr Ramadan's citizenship in July 2007, concluding that he had obtained Maltese citizenship by fraud (simulated marriage even if they had a child together);
- ✓ The applicant is still residing in Malta with his second wife and their two children where he carries out a business activity;
- ✓ No expulsion order had been issued.

ECtHR Case law: migration

Ramadan v. Malta, 2016

Law:

- Loss of a citizenship already acquired = refusal of recognition of citizenship
- Revocation (and denial) of citizenship could be arbitrary and raise issues under Article 8 ECHR >>> impact on private and family life
- The Court is not persuaded by the arbitrariness of the revocation cause:
 - ❖ Clear legal basis in Maltese legislation; procedural fairness;
 - ❖ No risk of expulsion;
 - ❖ Mr. Ramadan continued his private and family life in Malta, where he ran a business activity and could also apply for a work permit because of that circumstance.
- **No violation of Article 8 ECHR**

NB. Strong dissenting opinion of Judge Pinto de Albuquerque recognizing the existence of an **autonomous right to citizenship stemming from the Convention!**

ECtHR Case law: migration

Biao v. Denmark [GC], 2016

Facts:

- ✓ The applicants are a married couple complaining about the Danish authorities' refusal to grant them family reunification;
- ✓ Mr Biao, born in Togo, married a Danish citizen in 1994, and was granted Danish citizenship in 2002;
- ✓ After a divorce, in 2002 he married his current wife, born and raised in Ghana;
- ✓ The authorities found that the applicants did not meet the requirement that a couple applying for family reunification must have, i.e. no closer ties to another country than Denmark (the so-called '*attachment requirement*' >>> 28-year rule);
- ✓ The couple moved to Sweden in 2003. Mr Biao keeps his job in Copenhagen and commutes from Malmö to Sweden.

ECtHR Case law: migration

Biao v. Denmark [GC], 2016

Law:

Violation of Article 14, taken in conjunction with Article 8 ECHR:

- The 28-year rule imposes a difference treatment based solely on nationality and ethnic origin;
- The 28-year rule had the indirect effect of favoring Danish citizens of Danish ethnic origin, while produced a disadvantage, or at least a disproportionately prejudicial effect on persons who, like Mr Biao, had acquired Danish nationality later in life or who were of non-Danish ethnic origin;
- No similarities in any other Coe Member States' legal order + previous concern about the rule by ECRI, CERD and other independent bodies;
- Unjustified treatment between certain categories of individuals (especially Danish-born expatriates) who could be exempted from the attachment requirement under the 28-year rule, and individuals with no connection to Denmark who acquired Danish nationality later in life.

ECtHR Case law: asylum



F.G. v. Sweden [GC], 2016

- ✓ Rejection of the asylum application of an Iranian citizen converted to Christianity in Sweden
- ✓ **Refusal not on formal grounds without a meticulous assessment of the merits**
- **Violation of Articles 2 and 3 ECHR** if F.G. had been returned to Iran without a new and up-to-date assessment by the Swedish authorities as a consequence of his religious conversion

ECtHR Case law: migration

Khlaifia and Others v. Italy

Facts:

- ✓ Three Tunisian citizens leave Tunisia by sea during the Arab spring;
- ✓ Their boats are intercepted by the Italian authorities and the migrants are taken to the island of Lampedusa, where they are transferred to a Reception Centre;
- ✓ They are subjected to detention without any explanation or possibility of appeal;
- ✓ Unsustainable hygienic conditions in the Lampedusa centre and no contact with the outside world;
- ✓ Evasion, arrest and transfer to ships moored in Palermo;
- ✓ Subsequent expulsion to Tunisia.

ECtHR Case law: migration

Khlaifia and others v Italy [GC], 2016

- **Violation of Article 5 ECHR** > atypical measures for the detention of irregular migrants
- **Violation of Article 13 ECHR** (right to an effective remedy) **in conjunction with Article 3** > no remedy for complaining about detention conditions;
- **No violation of Article 3 ECHR** regarding the conditions of detention in the reception centre on the island of Lampedusa and the conditions on ships in the harbour of Palermo > emergency situation, dictated by the huge incoming migratory flow + non-vulnerable migrants;
- **No violation of Article 4, Prot. No 4 ECHR** + Article 13 ECHR in conjunction with Article 4, Prot. No. 4 > identification and appeal of expulsion order.

ECtHR Case law: asylum

Ilias & Ahmed v. Hungary

FACTS:

- ✓ 23-days of detention of two Bangladeshi asylum seekers in a border transit zone (Roszke);
- ✓ Subsequent expulsion to Serbia (considered by the law as a *Safe Third Country*).

Chamber judgment (2017):

Violations of Article 5 ECHR + Article 13 ECHR + Article 3 ECHR on expulsion but NO violation of art. 3 ECHR on conditions of detention:

- absence of formal reasoned decision and no possibility of judicial review;
- detention conditions not degrading because the applicants are not particularly vulnerable;
- expulsion to Serbia risks violating the principle of *non-refoulement* + no remedy.

ECtHR Case law: asylum

Ilias & Ahmed v. Hungary [GC], 2019

Grand Chamber judgment 2019:

YES violation of Article 3 ECHR with regard to the applicants' removal to Serbia but **NO** violation of Article 3 with regards to the transit zone's conditions + declares claims of violation of **Article 5 §§ 1 and 4 ECHR** *inadmissible* for **incompatibility *ratione materiae***:

- the applicants entered the transit zone voluntarily and could voluntarily leave at all times (no *de facto* deprivation of liberty);
- Hungarian authorities did not seek to deprive the applicants of their liberty; on the contrary, they ordered them to leave Hungary on the very day of their entry.

See (contra): CJEU [GS], *FMS, FNZ & SA, SA junior* (2020)

ECtHR Case law

Sea Watch 3, 30 January 2019

(Article 39 Rules of the Court)

« Hier, une chambre de la Cour européenne des droits de l'homme a décidé, à la majorité, d'indiquer une **mesure provisoire** concernant le **navire Sea Watch 3**, qui est actuellement amarré au large de Syracuse (Sicile) et à bord duquel se trouvent 47 migrants.

Le navire n'a pas été autorisé à entrer au port, et les requérants se plaignent d'être retenus à bord en l'absence de base légale, dans des conditions inhumaines et dégradantes, et d'être exposés au risque d'être renvoyés en Libye sans que leur situation ne fasse l'objet d'une évaluation individuelle.

Dans sa décision, **la Cour ne fait pas droit à la demande de débarquement des requérants**. Elle demande au gouvernement italien « de **prendre toutes les mesures nécessaires, dès que possible, pour fournir à tous les requérants les soins médicaux, la nourriture, l'eau et les produits de première nécessité nécessaires**. Le Gouvernement est également prié d'**apporter aux 15 mineurs non accompagnés qui se trouvent à bord l'assistance juridique appropriée** (par exemple des **mesures de tutelle**), et de tenir la Cour informée régulièrement de l'évolution de la situation des requérants ».

ECtHR Case law: migration

N.D. & N.T. v. Spain

Facts:

- ✓ Two sub-Saharan migrants tried to cross the border between Spain and Morocco by climbing the fences placed to guard the Spanish enclave of Melilla;
- ✓ Arrested by the Civil Guard and expelled to Morocco (practice of the so-called “*devoluciones en caliente*”).

Chamber judgment (2017):

- **Violations of Article 4, Prot. No. 4 ECHR + Article 13 ECHR:**
 - No administrative or judicial decision on refoulement;
 - No identification + no assistance of a lawyer, interpreter or medical staff;
 - No remedy to complain about the illegitimacy of the expulsion.

ECtHR Case law: migration

N.D. & N.T. v. Spain [GC], 2020

Grand Chamber judgment (2020):

NO violations of Article 4 Prot. No. 4 and of Article 13 ECHR :

- The respondent State had provided genuine and effective access to means of legal entry, in particular border procedures and a newly established asylum office at the border;
- The applicants could have applied either for a visa or for international protection at Spain's diplomatic and consular representations in their countries of origin or transit or else in Morocco;
- The applicants had failed to make use of those possibilities and consequently were unable to submitting reasons against their expulsion in a proper and lawful manner;
- Lack of individual removal decision or remedy was the consequence of their own actions!

ECtHR Case law: asylum



M.N. and Others v. Belgium, 2020

Facts:

- ✓ A Syrian family from Aleppo (couple with two children) travelled to the Belgian Embassy in Beirut to submit visa applications since the bombing situation in their home-town;
- ✓ Belgian authorities refused to issue short term visas on humanitarian grounds with a view to applying to asylum once in Belgium
- ✓ Subsequent applications for judicial review were dismissed

See also: CJEU [GC], *X and X v. Belgium*, C-638/16 PPU (2017)

ECtHR Case law: asylum

M.N. and Others v. Belgium (GC), 2020

The Court declared the case **inadmissible**:

- No extraterritorial exercise of jurisdiction by Belgium: extraterritoriality should be defined and limited by the territorial sovereignty of other states and is assessed on the basis of the specific facts of each case
 - ❖ the mere fact of entering an embassy cannot establish a jurisdictional link;
 - ❖ the fact that the applicants brought proceedings at the national level is not sufficient to establish jurisdiction;
- Article 6 was not applicable *ratione materiae*, as the right to entry to territory is not a civil right within the meaning of that Article, similar to its findings regarding any decision relating to immigration.

ECtHR Case law

Alhowais v. Hungary, 2023

Facts:

- ✓ The applicant, a Syrian national, together with his brother and other individuals, tried unsuccessfully to cross the Tisza river from Serbia to Hungary, by a boat, with the aid of smugglers
- ✓ According to the applicant, Hungarian border guards forced them to turn back
- ✓ The applicants brother was later found drowned
- ✓ The police and applicant's version about the cause of death was in contrast

ECtHR Case law

Alhowais v. Hungary, 2023

Law:

- **Violation of Articles 2 and 3 ECHR** (procedural limb – no effective investigation)
- **Violation of Article 2 ECHR** (substantive limb - positive obligations)
 - Ineffective investigation into the death of the applicant's brother and into applicant's arguable allegations of police ill-treatment. No assessment of responsibility for failure to protect right to life
 - Failure to discharge positive obligations by taking operational measures to protect life in circumstances in which it was manifestly at risk
 - No clear order of priorities or course of action set for dealing with migrants in a vulnerable situation
- **No violation of Article 3 ECHR** (substantive limb – no proof)
 - Court unable to conclude beyond reasonable doubt, **largely due to investigation shortcomings**, that physical force was used against the applicant

ECtHR Case law

M.A. and Z.R. v Cyprus (pending) *(Application No. 39090/20)*

Facts:

- ✓ Two Syrian nationals tried to seek asylum in Cyprus
- ✓ Summary return to Lebanon after being intercepted by the Cypriot police and detained on a boat for a period of two days
- ✓ Currently residing in Lebanon and registered with the UNHCR but are allegedly unable to renew their residence permit and have no means of subsistence, with a serious risk of *refoulement* to Syria

NB: The Court still has to rule over the case

ECtHR Case law

M.A. and Z.R. v Cyprus, 2020, (pending)

Relevant questions to the parties:

1. Did the facts of which the applicants complain in the present case occur within the jurisdiction of the Republic of Cyprus (see *Hirsi Jamaa and Others v. Italy* [GC], §§ 70-82)?
2. Did the applicants' return to Lebanon by the Cypriot authorities expose them to a risk of being subjected to treatment in breach of Article 3 of the Convention (see *Ilias and Ahmed v. Hungary* [GC], §§ 128-41, and *M.S.S. v. Belgium and Greece* [GC],, § 365)?
3. Did the circumstances and manner of the treatment of the applicants by the Cypriot Port and Marine Police amount to degrading or inhuman treatment in breach of Article 3 of the Convention (see, *mutatis mutandis*, *Khlaifia and Others v. Italy* [GC], §§ 202-11)?

ECtHR Case law

M.A. and Z.R. v Cyprus, 2020 (pending)

Relevant questions to the parties:

4. Were the applicants, aliens in the respondent State, expelled collectively, in breach of Article 4 of Protocol No. 4 (see, *mutatis mutandis*, *N.D. and N.T. v. Spain* [GC, §§ 166-88, and *Hirsi Jamaa*, §§ 166-86)?

5. Did the applicants have at their disposal an effective domestic remedy for their complaints under Article 3 of the Convention and Article 4 of Protocol No. 4, as required by Article 13 of the Convention (see, *mutatis mutandis*, *Khlaifia and Others*, § 279)?

6. Were the applicants deprived of their liberty in breach of Article 5 § 1 of the Convention ?

7. Did the applicants have at their disposal a procedure by which they could challenge the lawfulness of their detention, as required by Article 5 § 4 of the Convention (see *Khlaifia and Others*, §§ 128-31)?



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

Evangelos Papakonstantinou

Legal framework on asylum and immigration in Greece

TRALIM 3 Nicosia, 20 February 2023



Co-funded the European Union

- Introduction

More than seven years have passed since the unprecedented arrival of the refugee population with which Greece, and by extension Europe, has been confronted.

Greece had already faced increased refugee flows between 2007 and 2011 as a result of the armed conflicts in Iraq and Afghanistan. The construction of the Evros fence in 2012 reduced arrivals by 95% from the land route, with a direct consequence of increased flows to the islands. In 2015, Greece surpassed Italy in refugee arrivals, receiving around 68,000 refugees in the first half of the year, mainly from Syria and Afghanistan.

The increased refugee flows have led to initiatives by European institutions. The start was made in 2015 with relocation scheme, which was implemented by two Council of Europe decisions, 1523 of 14.9.2015 and 1601 of 22.9.2015 establishing temporary measures in the field of international protection for Greece and Italy.

Given that relocation scheme was moving slowly and did not deliver as expected, European leaders reached a legally and politically controversial "agreement" with Turkey by implicitly recognising it as a safe third country and consequently rejecting asylum claims as inadmissible, which simplified the process and allowed for immediate returns.

A series of decisions of the old Appeals Committees of the old Appeals Committees of Presidential Decree 114/2010 had deemed Syrian asylum applications admissible, with the result that the Ministry of Migration Policy abolished them and assigned them to new ones by changing their composition and appointing two administrative judges among their members.

The sequence of events was as follows.

In September 2016, two Syrian asylum seekers filed an application for annulment before the Council of State against the rejection decisions of the new Independent Appeals Committees, which rejected their applications at second instance and additionally against the deportation decisions. By its decisions No. 2347 and 2348/2017, the CoE finally rejected the applications for annulment and upheld the decisions of the Appeals Authority.

The latest development in relation to the designation of Turkey as a safe third country was the Joint Ministerial Decision No 42799/3.6.2021 of the Deputy Minister of Foreign Affairs and the Minister of Immigration and Asylum, according to which Turkey is included in the national list of safe third countries for applicants for international protection whose country of origin is Syria, Afghanistan, Pakistan, Bangladesh and Somalia.

This decision was challenged in court by the Greek Council for Refugees (GCR) and the organization Refugee Support in the Aegean (RSA) and the Plenary of the Council of State, in a decision published on Friday 3/2/2023 (CoE Olom. 177/2023), referred a question for a preliminary ruling to the Court of Justice of the European Union (CJEU) on the influence on the legality of the national list of applicants for international protection of the fact that Turkey has refused to readmit applicants for international protection for a long period of time (more than 20 months), while at the same time it is not clear whether the possibility of Turkey changing its position in the near future has been investigated.

This direction of restricting the right of access to asylum by summarily rejecting applications for international protection, at a time when thousands of refugees cannot be returned to Turkey because readmission to Turkey has stopped since March 2020, it has placed refugees in a grey area without papers in conditions of poverty and misery with the risk of long detention, and has unfortunately meant discounts not only in relation to the right of asylum seekers to seek and receive protection, but also in relation to the conditions under which it is granted when it is requested.

Thus, the purpose of this speech is not to exhaustively describe the legal framework, but to highlight, with a critical approach and through case law, aspects of the asylum procedure as it has evolved since the entry into force of the EU-Turkey Agreement.

- The national legal framework

A brief historical background

The examination of applications for international protection was the responsibility of the Hellenic Police and the Ministry of Public Order, as it was then called, the first relevant legislation adopted being Presidential Decree 61/1999. In the process, PD 90/2008 was adopted, which was amended by PD 81/2009, legislation that has now been repealed.

In the context of the implementation of the M.S.S. versus Belgium and Greece judgment, and in particular with regard to Greece's condemnation of the applicant's detention conditions and the shortcomings and difficulty of access to the asylum procedure, the Greek authorities submitted to the Committee of Ministers, at its meeting of 13-14 September 2011, the Greek Action Plan for the Management of Migration. This detailed the reform of the asylum procedure in Greece through PD 114/2010 and Law 3907/2011.

PD 114/2010 replaced PD 90/2008 and PD 81/2009 and regulated the transitional asylum procedure, i.e. the processing of applications submitted until 7 June 2013, limiting the role of the Police. Thus, although in the first instance, pending applications were examined by the competent police authorities, the second instance examination was carried out by the Appeals Committees, which consisted of an official of the Ministry of Interior or Justice, a legal practitioner as chairman, a representative of the UNHCR and a legal practitioner specialised in refugee law or human rights law as members.

On the other hand, the Law 3907/2011 upgraded the asylum procedure as a whole by establishing the First Reception Service, the Central Asylum Service and the Appeals Authority. The added value of the new system is that it delegated the examination of asylum applications entirely to civilian bodies. As of 7 June 2013, the Asylum Service, which is an autonomous public service operating at directorate level and now reporting directly to the Minister of Immigration and Asylum, started operating.

Thus, applications submitted from June 7, 2013 onwards are examined in the first instance by the Regional Asylum Offices or the Asylum Autonomous Units and in the second instance by the three-member Appeals Committees, an innovative institution for the Greek administration. These committees operated until September 2015, when their term of office expired, which was never renewed by a Joint Ministerial Decision.

By the Law 4375/2016, the procedure of the appellate review was further amended, as it was envisaged that the three-member Appeals Committees would be staffed following a tender process conducted by the Appeals Authority and the National Centre for Public Administration and Local Government. These Committees also never functioned.

An amendment provided for the Independent Appeal Committees to be staffed, as quasi-judicial bodies, by two judges of the ordinary administrative courts, the

most senior of whom would act as President, and one person nominated by the United Nations High Commissioner for Refugees.

The composition of the Committees has been amended by Law 4636/2019, which was passed on 1 November 2019, entered into force on 1st January 2020 and made radical changes to the previous Law 4375/2016. In the process, it was also amended within four months after its entry into force, amidst a pandemic by N. 4686/2020.

Now, Law 4939/2022 is in force, which was passed on 10 June 2022 and has kept most of the main changes introduced by Laws 4636/2019 and 4686/2020.

In this speech, I would like to focus on some critical sections of the current Greek Asylum Code.

- Persons in need of special reception conditions and special procedural guarantees (Articles 1(lc), 41(d), 62, 67 and 72)

The position of persons belonging to vulnerable groups of applicants for international protection has been made more difficult by the provisions of the Asylum Code.

Initially, Article 41 amended the definition of vulnerable groups for reception and identification purposes. In the listed categories, the category "persons with post-traumatic stress disorder syndrome" was deleted (see Article 14(8) of Law 4375/2016).

Vulnerable persons" means, according to the current law, in particular, unaccompanied or unaccompanied minors, direct relatives of shipwreck victims (parents, siblings, children and spouses), persons with disabilities, elderly persons, pregnant women, single-parent families with minor children, victims of trafficking in human beings, persons with serious illnesses, persons with mental and psychological disabilities and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of genital mutilation.

Persons in need of special reception conditions do not include lesbian, gay, transgender, transsexual, bisexual, queer and intersex (LGBTI) people, who should be identified by reception services and appropriately accommodated in

reception and accommodation facilities, given the increased risks that these people have been shown to face.

A key regression in the new Asylum Code in the procedural guarantees to recognized vulnerable applicants is the removal of their exemption from the fast-track island procedures (Article 60(4) of Law 4375/2016 and Article 95(3) of Law 4939/2022).

Recognizing an asylum seeker as a vulnerable case and referring him/her to the regular procedure served the following purpose: to conduct the examination of the application with the guarantees that de facto cannot be respected in the border procedure, in view of the serious gaps that exist on the islands in terms of legal, psychosocial and medical assistance. In other words, the cases of vulnerable applicants were referred to the normal procedure, so that those identified as vulnerable could enjoy their rights and be provided with additional support to enable them to respond to the process of examining their application.

With the previous law 4375/2016 there were also violations by the Administration, in that although it had identified some applicants as vulnerable, it had placed them in the border procedure and for this reason the annulment courts had ruled that their placement in the border procedure deprived them of the special treatment established by the law for persons who were proven to belong to vulnerable groups.¹

¹ Extract from the 231/2018 DecPir decision: 11. Because Directive 2013/32/EU allows the national legislature to establish a special accelerated procedure for the examination of applications for international protection lodged at borders or in transit zones or while the persons concerned remain in reception and identification centres, in the case of arrivals of large numbers of third-country nationals or stateless persons, provided, inter alia, that the basic principles and guarantees laid down in Chapter II thereof are complied with. Furthermore, the exemption from the application of the above procedure for the categories of persons referred to in point (f) of Article 60(4) is justified, as regards those belonging to vulnerable groups, in view of the particular circumstances in which these persons are placed (unaccompanied minors, disabled persons or persons suffering from an incurable or serious illness, elderly persons, pregnant or post-partum women, single-parent families with minor children, victims of torture, rape or other serious forms of psychological, physical or other sexual violence or exploitation, persons with post-traumatic stress disorder syndrome, in particular survivors and relatives of shipwreck victims, and victims of human trafficking), as defined in paragraph 8 of Article 14 of Law No. 4375/2016, to which article 60 par. 4 point f' of the same law) [CoE Oloem. 2348/2017 para 30]. [...] 15. [...] Directive 2013/32/EU allows the national legislature to establish a special accelerated procedure for the examination of applications for international protection lodged at borders or in transit zones or while the persons concerned remain in reception and identification centres, in the case of arrivals of large numbers of third-country nationals or stateless persons. Furthermore, however, in accordance with the express provision of subparagraph f' of paragraph 4 of Article 60 of Law No. 4375/2016, but also of para. 5 of article 1 of the decree no. 13257 (Government Gazette B 3455/26.10.2016) of the decision of the Ministers of Interior and Administrative Reconstruction and National Defence "Implementation of the provisions of paragraph 4 of article 60 of Law 4375/2016 (A 51)", the derogation procedure of the said article does not apply in case it is established that the applicant for international protection belongs to a vulnerable group, inter alia, according to paragraph 8 of article 14 of Law 4375/2016. In the above circumstances, the Independent Appeals Authority, which

What the last law sought to do, and what we see in practice, is that vulnerable applicants arriving on the Aegean islands, even if they are recognised as vulnerable, are processed through the border procedure, which means that the process from the date of registration of the asylum application to the interview is extremely short, a maximum of 5 days, without sufficient time for proper preparation, legal and psychosocial support, resulting in many applications being rejected as unfounded.

While thereafter, even if applicants are given a 30-day deadline to appeal, there is just a typical referral to the regular procedure with a longer deadline to appeal and a suspensive effect, without, however, a referral for psychosocial diagnosis or to specialised medical assistance, especially in very vulnerable cases, such as victims of violence, rape and torture.

It is also explicitly emphasised by the current law that the only consequence of a finding that a person belongs to a vulnerable group is that the specific reception needs of that person are met. (Article 41(d)).

There is an attempt, unfortunately, both by the Asylum Service and the Appeals Authority, to simplistically isolate the provisions applicable to vulnerable asylum seekers in relation to reception conditions from the other provisions of the Asylum Code, by failing to mention all the treatment that a vulnerable applicant must receive when assessing his or her application, the specific procedural guarantees that the Examining and Deciding Authorities must provide

examined the applicant's appeal, in so far as, as accepted in the 16th paragraph of the contested decision, it accepts that the applicant falls within the category of vulnerable persons within the meaning of Article 14 para. 8(f) of Law No. 4375/2016 (the applicant's vulnerability had already been diagnosed at a stage prior to the adoption of the contested decision and had come to the attention of the Commission), incorrectly interpreted and applied the above provisions, accepting that his application for international protection was lawfully examined under the exceptional procedure of Article 60(4)(a) of the Greek Criminal Code. 4 of Law No. 4375/2016 (border procedure), instead of the normal procedure, to which the case should have been referred, and this irrespective of the fact that the examination of the case under the normal procedure does not necessarily mean that the case was examined on its merits, as the applicant claims. In the light of the foregoing, the more specific judgements of the contested decision that inclusion in the groups is a criterion for special treatment during the reception and identification procedure and, in any event, is not a criterion for granting international protection, and that the only consequence of a case being subject to the normal procedure is that it must be examined within a longer period than the shorter period under the accelerated procedure and, finally, that the applicant has not shown that the failure to comply with the above-mentioned procedure has caused to him procedural harm are not legal . This is because, if accepted, it would have the effect of circumventing the provisions of Article 60(f) of the Rules of Procedure. Paragraph 4 of the Law. 4375/2016 and the aforementioned ministerial decision that specifies it, and renders the special treatment established by the legislator for applicants for international protection, who demonstrably belong to the category of vulnerable persons, irrelevant. In the light of the foregoing, the contested decision of the 10th Independent Appeals Authority must be annulled and the case must be referred back to the Administration so that the normal procedure for examining the applicant's application for international protection as a person falling within the category of vulnerable persons, as set out above, may be applied in the applicant's case.

throughout the asylum procedure, but above all the fact that being identified as a victim of violence or torture means that one has suffered past persecution, and that fact is, according to the same law, a serious indication that the fear of being persecuted again is well-founded.

This concern is confirmed by a recent decision of the Appellate Authority (no. 94772/2022, 2nd Independent Appeals Committee) , which ruled a subsequent asylum application as inadmissible, arguing that vulnerability (the applicant had been certified by the National Public Health Organization's team as a victim of violence and torture) is not a reason for granting international protection or subsidiary protection, and in any case, the finding that a person belongs to a vulnerable group only has the sole consequence of immediately meeting the particular needs of his or her reception.

Specifically for unaccompanied asylum seekers, the explicit provision for the examination of their applications always with the normal procedure (paragraph 7 of article 45 of Law 4375/2016) was abolished and therefore, they are henceforth covered by the general provisions for persons in need of special procedural guarantees due to their age and are included in the border procedure (article 95.paragraph 4) only if a) the unaccompanied minor comes from a country, which is included in the list of safe countries of origin according to para. 5 of Article 92 of this Code; b) the unaccompanied minor has submitted a subsequent application; c) the unaccompanied minor may, for serious reasons, be considered a danger to the national security or public order of the Member State, (d) there are reasonable grounds for considering a country to be a safe third country for the unaccompanied minor in the specific circumstances in which he or she is found, in accordance with Article 91, provided that this is in the best interests of the minor, (e) where the unaccompanied minor has misled the authorities by submitting false documents, or has destroyed or lost in bad faith an identity or travel document which would help to establish his or her identity or nationality, in order to avoid a negative decision being taken against him or her, provided that he or she and his or her guardian or the person exercising the guardianship act have previously been given a full opportunity to provide sufficient reasons for doing so.

In this respect, for the broader category of persons in need of special procedural safeguards, the cessation or non-application of the accelerated procedure under Article 88(1)(b) or the border procedure under Article 95 is envisaged only if 'sufficient' or 'appropriate' support is not provided, without, however, being provided by the legislator who and according to what criteria will decide

whether or not persons in need of special procedural safeguards will be excluded from the above procedures.

An additional restriction on the rights of vulnerable categories is imposed by Article 67 of Law 4939/2022. The provision requires victims of torture, rape or other serious acts of violence to be "certified by a medical certificate from a public hospital, a military hospital or appropriately trained physicians of public health service providers". This provision unjustifiably goes beyond the scope of the Directive, which is limited to stating that people in these categories must have access to appropriate medical and psychological care or treatment by qualified professionals, without reference to the public or private nature of such care.

It is worth noting that there are no public health structures specialising in the identification or assistance of torture survivors/survivors in mainland Greece and the relevant services regarding certification and assistance were provided by NGOs, in some cases with considerable discontinuity. According to METAdrasi, the organisation responsible for the certification of torture cases, in mainland Greece, from 2011 to June 2019, 1,240 people have been certified as victims of torture. The current regulation reinstates a provision that had been proposed as early as 2018, and ultimately not implemented, which had raised similar concerns to the above.

The inability to comply with the obligations imposed by the provision is systematically and explicitly confirmed by the competent bodies, including the Athens General Hospital "Evangelismos", the Mytilene General Hospital "Vostaneio", the General Hospital of Chios 'Skylitseio', the General Hospital of Samos, the General Hospital of Kos, the North Aegean Forensic Service and the Forensic Service of the Dodecanese and Athens.

At the same time, opinions from bodies other than those provided for in Article 67 of Law 4939/2022 are not always accepted by the competent administrative and judicial authorities.

Consequently, the contested provision makes the certification of torture victims impossible and places victims of torture, even if they have been diagnosed with certificates from specialised bodies which validly follow the methodology provided for in the Istanbul Protocol, at risk of being returned to their countries of origin and of being subjected to inhuman and degrading conditions in breach of Article 3 of the ECHR.

- Secondary procedure for examining applications for international protection

Article 46 of Directive 2013/32/EU (former Article 39 of Directive 2005/85/EC) on the right to an "effective" remedy provides that an effective remedy must ensure a full and ex nunc examination of both the factual and legal issues and, as a general rule, an automatic suspensive effect on the exercise of the remedy is recognised, with certain exceptions provided for in para. 6 of the same article. The Greek legislature had from the outset (see P.D. 61/1999) chosen the remedy of an appeal before an administrative body as the most effective remedy that fulfils the conditions of formal and substantive ex nunc review of the case. The composition of the appellate body for the examination of appeals in international protection procedures has already been amended six times in twenty years (1999-2019), with Law 4636/2019 being the seventh amendment. In this regard, as regards the Independent Appeals Committees of Law 4375/2016, the Plenary of the Council of State (2347/2017, 2348/2017) held that they exercise judicial powers and therefore judges of the ordinary administrative courts are legally involved in them, while the procedure before them ensures a full and ex nunc examination of both factual and legal issues, fulfilling the conditions of a "real" appeal under Article 49 of Directive 2013/32/EU. As regards the participation in them of private independent experts nominated by UNHCR, they enjoy the guarantees of personal and functional independence in the exercise of their functions both in relation to the Administration and in general, as there is a suspension of the exercise of any other public function or professional activity during their term of office in the Independent Appeal Committees. According to the UNHCR, the mixed composition of the Committees has significantly contributed to maintaining high quality standards of the procedure at the appeal stage and has been beneficial for both judges and independent experts, jointly producing high quality results.

Law 4636/2019, as amended and in force by Law 4939/2022, provided that the three-member Appeals Committees, which will be responsible for examining appeals against decisions of the Asylum Service, will be composed entirely of first and second instance judges.

Article 115 of the Law amended Article 15 of Law 3068/2002, transferring the competence for the review of administrative acts in the field of asylum from the administrative courts of appeal to the administrative courts of first instance.

As a consequence, the Administrative Court of First Instance carries out the review of decisions that can be (and usually are) taken by the composition of the Commissions involving senior administrative judges.

This reversal of the fixed structure of judicial review in stages, starting with lower and ending with higher judges, is unprecedented for Greek and pan-European standards. The judicial hierarchy is a guarantee of the judge's independence and impartiality, while the judgment of judicial decisions by senior judges is a presumption that it will be substantive and not procedural.

By decisions A1580/2021 and A1581/2021 published on 8 October 2021, the Plenary of the Council of State ruled by a majority that it is not contrary to the Greek Constitution that Articles 115 of Law 4636/2019 and 15 of Law 3068/2002 confer the power to conduct the annulment review of asylum decisions of the Independent Appeals Committees (which are largely composed of senior judges) to the Administrative Courts of First Instance of Athens and Thessaloniki, which are composed of lower-ranking judges.

The majority of the Plenary Session of the CoE held that administrative judges participate 'as state officials' in the Appeals Committees as a 'collective body of the administration', which exercises 'powers of a judicial nature' which are 'closely linked to the exercise of the right to judicial protection and the granting of such protection by the ordinary administrative courts'.

Specifically, he pointed out that the Independent Appeals Committees of the Appeals Authority of the Ministry of Immigration and Asylum are not courts but "independent authorities (integrated into the structure) of the executive function of the state. He added, however, that the Committees exercise powers of a "jurisdictional nature" by checking the legal and substantive validity of asylum decisions "in order either to resolve the dispute quickly, or, at least, to adequately clear up the legal and/or factual issues that have been resolved, in order, on the one hand, not to unnecessarily burden the administrative courts and, on the other hand, to serve the economy and efficiency of the relevant legal proceedings for the resolution of the dispute... and ... are consistent with the right to judicial protection and the exercise of judicial functions by the ordinary administrative courts' (para. 14).

"The 'jurisdictional' nature of the [Commissions'] powers therefore follows from the fact that their exercise, on the one hand, is aimed at resolving disputes submitted to the [Commissions] in accordance with the law, and, on the other

hand, is closely linked to the exercise of the right to judicial protection and the granting of such protection by the ordinary administrative courts. However, the decisions of the [Committees] do not constitute an exercise of judicial function, which the Constitution (Article 26) reserves to the courts, but a necessary adjunct to the judicial process, for the more efficient functioning of the administrative courts.

The majority then stressed that judges participate in the Commissions "not in their capacity as judicial officers, but as state officials - members of the independent authorities of the executive function".

It went on to say that the review of the annulment of the Committees' decisions "does not assess the legality of court decisions or judicial decisions, , nor, moreover, does it review the judgments of judicial officials, made in their capacity as such, but judgments of collective bodies of the executive".

The independence of the judges responsible for reviewing the annulment is therefore not weakened by the participation of other judges, in particular judges of a higher rank, in the executive body.

The minority opinion (para 15)

In the opinion of the minority, "The legislature has wide discretion to prescribe the ways in which the judiciary is organised and functions, but always within the constitutional limits, in the sense that it is obliged, when adopting the relevant rules, to fully respect the principle of the rational organisation of the judiciary, as laid down by the Constitution (Articles 26, 93 and 95), which relates to its proper functioning and the promotion of efficiency in the administration of justice, and to ensure the independence of the judiciary'.

The regulation of No. 115 of Law 4636/2019 is contrary to the constitutional principles of the rational organisation of justice and judicial independence and impartiality, since the independence of the opinion of lower judges on the decisions taken by higher-ranking judicial officials is reasonably questioned, irrespective of whether a judicial decision or a decision of an administrative body exercising judicial functions is being reviewed.

Furthermore, the minority took into account the fact that the presidents of the courts of appeal conduct inspections in the administrative courts of first instance and propose disciplinary proceedings against any person inspected, while the

appellate judges participate without a vote in the Supreme Council for Administrative Justice with regard to changes in the service of judges below the rank of appellate.

At the same time, Article 116 of Law 4636/2019, assigned the examination of the appeal to a single-member composition for cases of late appeals, subsequent applications, appeals examined under the expedited procedure.

However, this provision also seems to be in conflict with contrary case law of the Council of State ² and has been again in the context of the pilot trial submitted a preliminary question with the 534/2022 decision of the Administrative Court of First Instance of Thessaloniki to the Council of State whether they comply with the provisions of paragraphs (a) and (b). 2 and 3 of Article 89 of the Constitution, the provisions of Article 5 para. 7 of Law 4375/2016, according to which the Independent Appeals Committees, bodies integrated in the structure of the executive power, which exercise judicial functions as collective bodies, may operate and decide, in the categories of cases specifically mentioned in that article, under a single member composition".

Now, under Law 4939/2022, as amended and in force: a) the appeal must state "specific grounds" (Article 97), otherwise it is rejected as inadmissible. However, taking into account the extremely short time limits in cases especially of the border procedure (10 days) may objectively make it difficult for the applicant to communicate with his/her lawyer, resulting in the filing of an appeal without specific reasons leading to its rapid examination and its rejection as inadmissible.

Also, it should be stressed that although the Registry of Lawyers of the Asylum Service has been established, the contact between the lawyer and the applicant is most of the time at a distance, and most of the times it is exhausted during the filing of the appeal, while especially in cases where the applicants do not reside in Athens, where the Appeals Authority meets, they are not represented by the lawyer of the Registry, nor has a certificate of residence of the structure where they reside been sent, which we will talk about immediately below.

² CoE (3rd Chamber) 2980/2010, paragraph 5: "In particular, from this exceptional provision [i.e. 89 par. 2 S), narrowly interpreted as above, it follows that it is not permissible to entrust a judicial officer with the administrative functions of a unicameral body, regardless of whether or not that body is of a disciplinary, control or judicial nature (cf. and the minutes of the 6th Revisionary Chamber of the 1st Period, Session I, Session I, Session RLV, p. 597); this is because in the case of a unicameral body, liability is personalised to the greatest extent possible, with the result that there is a risk that the validity of the judicial officer may be called into question if his decisions are challenged before a court in his capacity as a unicameral administrative body'.

b) the applicant must be present in person or through a lawyer by proxy at the hearing of his/her appeal (Article 83(3)(a)), although the procedure before the Independent Appeals Committees remains in writing, under penalty of inadmissibility, and in the event that he/she or his/her lawyer or counsel by proxy does not appear or does not send a certificate of residence in a shelter, the appeal will be rejected as inadmissible.

In the opinion of the speaker, that restriction is considered excessive in relation to access to the remedy of an appeal, given that the committees meet in Athens and the applicants, because of their meagre financial resources, are often unable to pay their travel expenses to the capital from their place of residence.

Unfortunately, in practice, there are cases in which the lawyers of the Registry of the Asylum Service did not appear at the hearing of the appeal, with the result that the appeals were rejected as inadmissible. However, in a recent decision, the Administrative Court of First Instance of Thessaloniki, in its decision AD 463/2022, ruled that there was a case of inadequate legal assistance in the second instance and specifically ruled that *"The applicant's appeal was not lawfully rejected as manifestly unfounded, in as much as he reasonably expected to be represented before the Appeals Committee by the lawyer appointed by the relevant decision of the Asylum Service to provide him with legal assistance and representation, and for that reason he did not himself send the aforementioned certificate of his residence in a reception centre to the Appeals Committee."*

c) The automatic suspensive effect of the exercise of the appeal is abolished and exceptions are introduced (Article 110(2) and (3)) which require the prior submission of a request for suspension by the applicant before the Independent Appeals Committee, invoking relevant reasons that make it impossible for him/her to return to his/her country of origin and justify the granting of a suspension of his/her removal from Greece and his/her stay in the country pending the examination of his/her appeal. In the opinion of the speaker, the filing of a separate application for leave to remain is maintained as an unnecessary procedural stage in the appeal examination of asylum applications, which adds a disproportionate burden on applicants and the Appeals Committees, taking into account the short time limits imposed by law for the examination of appeals. The systematic practice of rejecting the relevant application for leave to remain as unfounded after a decision on the appeal has been taken is indicative of the problematic nature of the regulation.

(d) The procedure before the Independent Board of Appeal is generally based on the submitted legal drafts and additional documents.

While it is positive that Law 4939/2022 provides for an obligation to be summoned, the right to a prior hearing is applied by the Commissions in extremely rare cases and thus the "obligation" becomes discretionary and depends on whether or not the Committees interpret the law in favor of the applicant.

Citation of case law: Regarding the obligation to summon a minor applicant from Morocco, a street child and victim of sexual abuse, to an oral hearing, the decision of the IB Chamber of the Administrative Court of Appeal of Athens, No. 3295/2017 held that "With the late allegations, however, that the applicant made in his appeal about rape and sexual abuse in Morocco, a short time before his arrival in Greece, and about his mental problems since then, the applicant relied on sufficiently clear facts, of which he even produced evidence, and which, if true, allegedly indicate, in principle, serious harm to him in his country of origin within the meaning of the abovementioned provision, that is to say, inhuman or degrading treatment. In view of this and given that at the time the above facts were invoked (30.09. 2016), the applicant was still a minor, (not having reached the age of 18), lacking a guardian and without the support of a specific counsellor, coupled with the fact that the nature of the above incidents, as traumatic experiences, is capable of making it difficult to describe them thoroughly and in detail even to adult persons, also taking into account the allegation made from the outset by the applicant, who, moreover, although he has reached the age of majority, is of post-adolescent age, that he lacks a supportive environment in his country, the contested decision is not sufficiently reasoned in its above-mentioned rejection, which it expressed without thoroughly examining the credibility and plausibility of the aforementioned late allegations or even inviting the applicant to an oral hearing to provide any necessary explanations, as the applicant claims in the application. "

e) Finally, Law 4686/2020 (article 61) abolished, retroactively from 1.1.2020, the possibility for the Independent Appeals Committees, in the event of a negative decision on the applicant's application for international protection and if it was presumed that the conditions of para. (f) of Article 19A of the Immigration Code, and subject to the finality of the decision, to refer the case to the competent Service of the Ministry of the Interior to decide on the granting or not of the foreigner's residence permit in Greece for humanitarian reasons.

It is equally important to note that this regulation also covered other protection gaps, such as granting a residence status to unaccompanied minors whose application for international protection was rejected and for reasons of the best interests of the child could not be returned to their countries of origin, but also to persons with strong vital ties to the country - the right to private or family life under Article 8 ECHR - or for serious health reasons. Unfortunately, the abolition of the relevant regulation has resulted in the creation of a significant number of people who, although they cannot be removed from the country, are deprived of fundamental rights and remain in a situation of prolonged insecurity and risk. There were also examples where the retroactivity of the law was applied, with the result that they were unable to obtain a residence permit on humanitarian grounds.

- Administrative detention

According to international and European law, applicants for international protection are not detained for the sole reason that they have applied for international protection or entered and/or reside irregularly in the host country. Paragraph 1 of Article 50 of Law 4939/2022 correctly incorporates this principle.

However, an overall reading of the articles of Law 4939/2022 reveals the strengthening of measures to restrict the freedom of applicants for international protection, as exceptional detention is explicitly extended to all applicants for international protection, the measure of detention is maintained for vulnerable groups, namely for unaccompanied minors.

In more detail:

Article 50 par. 2 incorporates for the first time, the possibility of exceptionally imposing detention on applicants for international protection only on one of the following grounds:

- (a) for the purpose of establishing his or her identity or origin or nationality; or
- (b) in order to determine the elements on which the application for international protection is based, the acquisition of which would otherwise be impossible, in particular where there is a risk of absconding of the applicant, as defined in Article 18(g) of Act No. 3907/2011, or
- (c) where it constitutes a risk to national security or public order, in the reasoned judgment of the competent authority
- d) when there is a significant risk of absconding, within the meaning of Article 2 of Regulation (EU) 604/2013, according to the criteria of Article 18 of Law No. 3907/2011, which are applied accordingly and in order to ensure the

implementation of the transfer procedure, in accordance with the aforementioned Regulation, or
(e) to decide, in the context of the procedure, the applicant's right to enter the territory.

Given the lack of relevant national legislation to specify the application of alternative measures to detention and the documented practice of indiscriminate enforcement of detention by the competent authorities, the detention of applicants for international protection has become the "norm", contrary to the provisions of international and European law.

Government figures show that in 2020,³ 4,062 asylum seekers applied for asylum while in detention and most of them remained in detention during the assessment of their application. Of these applications, more than 90% (3,692) were refused, while only 316 (7.8%) were accepted. A further 79 decisions granted subsidiary protection to asylum seekers.

Further, in accordance with Article 50 para. 5 of Law 4939/2022, it can be considered that applicants for international protection may be detained for a maximum of 18 months (in the context of the asylum procedure) with the possibility of extending the detention for another 18 months (in the context of the Return Directive procedures), since according to subparagraph f' of paragraph 5 of Article 50, detention periods imposed under Law 3907/2011 (Law on Returns) and 3386/2005 (Law on Deportations) are not counted in the total detention period.

In the event of an extension of the period of detention, the relevant decisions shall be forwarded to the President or the First Judge appointed by him/her of the Administrative Court of First Instance in whose District the applicant is detained, who shall rule on the lawfulness of the extension of detention and shall issue his/her decision by default, which shall be summarized in a record to be kept, a copy of which shall be immediately forwarded to the competent police authority, while applicants detained in accordance with the preceding paragraphs shall have the rights of appeal and lodging objections, both against the initial decision to detain and against the decision to extend it.

³ AP5278/31-3-2021, Ministry of Immigration and Asylum, Answer to questions of the Greek Council for Refugees

Also, once again, the Legislature has not abolished the administrative detention of unaccompanied children and children accompanied by their family members, despite the fact that their detention under asylum and immigration law can never be in the best interests of the child and despite Greece's repeated convictions by the European Court of Human Rights.

Detention may also be imposed when asylum applications are rejected by an appeal decision. In these cases, detention decisions are often issued and subsequently renewed for a period of more than three months. In this case, the detention serves as a means of ensuring the return of a person to Turkey in accordance with the EU-Turkey Declaration and the EU-Turkey Readmission Agreement.

However, as of 16 March 2020, Turkey has suspended the return of third country nationals whose asylum applications were rejected by Greece, citing restrictions due to the COVID-19 pandemic. This suspension continues until today. Asylum seekers whose applications for protection have been rejected are facing a deadlock: The Greek authorities detain them for the purpose of returning them to Turkey, while Turkey rejects all returns, with no indication of when it might review this policy.

Despite this, the Greek authorities often do not consider - even in cases of impossibility to return to Turkey - alternative measures to detention.

In particular, Article 30(4) of Law 3907/2011 states that "when it becomes evident that there is no reasonable prospect of removal for legal or other reasons... the detention shall be lifted and the third-country national shall be released".

In accordance with the above, as regards the impossibility of readmission to Turkey, but also as regards the possibility of using alternative detention measures, there has been recent case law (Administrative Court of First Instance of Kavala AP779/2022). 4] *Because, in these circumstances, the Court takes into account that, in accordance with Article 30 para. 4 of the Law. 3907/2011 (which is a transposition of Article 15 para. 4 of Directive 2008/115/EC), where it becomes clear that there is no longer any reasonable prospect of removal for legal or other reasons, the detention is lifted and the third-country national is immediately dismissed. Furthermore, as has been held (CJEU C-357/09, Kadzoev, paragraph 67), 'Article 15(4) of Directive 2008/115 must be interpreted as meaning that only the real prospect of successful removal without exceeding the*

time-limits laid down in paragraphs 5 and 6 of that article constitutes a reasonable prospect of removal and that there is no such prospect where it does not appear likely that the person concerned will be admitted to a third country within those time-limits'. In the present case, the opponent is being held with a view to his immediate readmission to Turkey, in accordance with the provisions of the order of the Court of Justice of the European Communities no. ... of the 12th Independent Appeal Commission. However, it is apparent from the documents submitted, referred to in the preceding paragraph, inter alia, that the procedure for the readmission of third-country nationals to Turkey has been suspended since 16 March 2020 and there is no evidence to suggest that that suspension will be lifted immediately, or else within a period not exceeding the maximum permissible limits of the respondent's detention, as provided for in paras. 5 and 6 of the aforementioned Article 30 of Law No. 3907/2011. Furthermore, it appears that the police authority has not taken any action to readmit the respondent to Turkey. In the light of the above, the Court finds that there is no reasonable prospect of readmission of the respondent to Turkey, as required by the aforementioned provisions of Article 30(4) of Law 3907/2011. 3907/2011 for the continuation of his detention. Accordingly, the legal conditions for the detention of the opponent, as pleaded in the main plea in law, are not satisfied and his objections to that detention must be upheld and his detention must be lifted. Furthermore, the respondent, in addition to the address of the residence where he is to be accommodated, must be obliged to declare to the competent police authority all his contact details, as well as to declare any possible change in the future, in order to enable the police officers to find him. In addition, the respondent must be required to appear once (1) a week before the police authority in the vicinity of the address of the residence where he is to be accommodated, at a day and time to be duly arranged by the aforementioned authority, until the execution of the pending decision to return him to the country from which he came becomes possible.

- Judicial protection after the rejection of an application for international protection

According to Article 114 of Law 4939/2022, applicants for international protection have the right to file a petition for annulment before the competent local administrative court of Athens or Thessaloniki. The local jurisdiction of the Administrative Courts of First Instance is determined according to the location of the Regional Asylum Office that issued the first instance decision. An application for annulment of the decisions of the Committees may also be brought by the Minister for Immigration and Asylum.

The time limit for filing an application for annulment is thirty days from the day after the notification of the appeal decision.

These decisions of the Administrative Courts of First Instance are subject to appeal before the Council of State (Article 5 of Law 702/1977). If the appeal decision is annulled, it is referred to the Appeals Committees for review.

An application for annulment has no automatic suspensive effect. Thus, an application for annulment may be accompanied by an application for suspension of the enforcement of the appeal decision. Article 115 para. 6 of Law 4636/2019,⁴ in the context of the general pressure for a faster examination of applications for international protection, now at the level of temporary judicial protection, has provided a new procedure for the examination of the application for suspension. The decision on the application for suspension is now issued by the rapporteur judge and not by the Chamber Council, without the applicant being invited to an oral hearing in most cases. In practice, of course, because of the volume of applications, the time limits are not respected either by the administration to send its observations within the time limit or by the Court of Justice.

- Epilogue

The rights and guarantees provided for asylum seekers are not independent of the context and the political situation at any given time. From the debate on how to build a fair and efficient asylum system in Greece, the discussion now focuses on what formulas the European Member States will invent to limit access to protection (safe third country clauses, definition of a "vulnerable" refugee).

At the same time, the concept of public interest has also entered the management of the refugee issue. Asylum seekers are deemed as weapons used by enemy States. Already, in the decision of the Council of State (CoE) No.

⁴ "In the cancellation proceedings referred to in point (c) of paragraph 1, following an application for a stay of execution, interim relief shall be granted at one stage by the competent judge-rapporteur by means of a summary judgment. Within two (2) working days of its filing, the application shall be notified, with the care of the applicant, to the competent Minister, who shall, in this case, forward the case file to the court within five (5) working days of notification. Within the same period, the Minister may state his views and the applicant may submit the evidence on which he bases his claims. The decision of the Judge-Rapporteur on the application shall be issued within seven (7) days of the expiry of the aforementioned time limits, provided that the relevant proof of notification has been submitted to the court. For the rest, the provisions of Decree-Law No 18/1989 shall apply mutatis mutandis."

805/2018, extensive reference is made to the consequences suffered by the six islands of the Eastern Aegean and the burden borne by the operation of the hotspots. As the judges point out, among other things, "the imposition of restrictions on movement has the consequence of not distributing these persons throughout the Greek territory, but instead of their unequal concentration in only certain areas and the significant burden and degradation of these areas".

The Geneva Convention managed to get through the Twin Towers unscathed and no one dared to tamper with it. The economic and political crisis, however, is redefining the policies of modern states and introducing restrictions on the rights of refugees as well. The granting of international protection, however, is not left to the discretion of states, but is an obligation under international treaties and European legislation. The emerging landscape is indeed bleak for the future of people who will want to seek protection. It is the duty of all civilized Member States not to succumb to political expediency, but to respect international and European law.