Recognising refugees in Greece: policies under scrutiny

Angeliki Nikolopoulou

Reforms to Greece's asylum system initially improved the fairness and independence of RSD but subsequent reforms are raising questions once again.

Prior to 2013, responsibility for refugee status determination (RSD) in Greece, a major entry point to Europe for undocumented migrants and asylum seekers, traditionally lay with its police and the ministry responsible for public order. The country's asylum system was widely criticised for ineffectiveness, lack of guarantees, mass prolonged detention under substandard conditions, and pushbacks, generating fear and mistrust among persons in need of international protection. These deficiencies led the European Court of Human Rights to condemn the country for *refoulement* and inhuman or degrading treatment of asylum seekers; the systemic deficiencies of its asylum procedures were confirmed by the Court of Justice of the European Union.[1]

Under pressure from the EU and internationally, in 2010 Greece set up a National Plan on Asylum and Migration and committed to reforming its asylum system by establishing independent civilian asylum authorities to conduct RSD: the Asylum Service at first instance and the Appeals' Authority at second instance. The Plan was supported by, among others, the European Commission, UNHCR and the European Asylum Support Office (EASO). The need for independent RSD was at the heart of the Plan's strategy, and EASO and UNHCR provided considerable support, largely through training and knowledge sharing, and also financially. Through partnerships with NGOs UNHCR has also provided capacity building to staff, and information to newcomers at entry points and to those being held in detention facilities.

The complexities of the legislative and administrative changes required, however, coupled with financial constraints caused by the severe recession, meant that the transition to the new regime was slow. During an initial transitional phase, which lasted until June 2013, the police retained competence for registration and first-instance RSD. UNHCR representatives were permitted to be present at interviews and to ask applicants questions, which improved the quality of interviews.[2] However, the number of those being recognised in first-instance decisions remained close to zero. UNHCR's opinions

Asylum seekers in overcrowded conditions in Moria reception/registration centre, Lesvos, prior to the fire in September 2020.

on cases were advisory only; the Greek authorities retained authority for making decisions and were largely unwilling to grant international protection. As a case in point, in 2012 only two out of 152 Syrian applicants were granted refugee status or subsidiary protection at first instance.[3] On the other hand, the establishment of independent Appeals Committees led to a 32% recognition rate within a year.[4]

The new Appeals Committees consisted of three members: one civil servant, one jurist specialising in refugee/human rights law (chosen from a pool of experts prepared by the National Commission for Human Rights – NCHR),[5] and a second jurist nominated by UNHCR. The independence and impartiality of the Committees were safeguarded through establishing specific recruitment criteria and a robust selection process. The Director of each Committee, for instance, was recruited by a group of experts with the involvement of the independent Greek Ombudsman, academics and UNHCR. In addition, members of the Committees enjoy full independence in their duties.

This scheme brought improvements in the quality and fairness of RSD and raised recognition rates. As an example, during the first months that such Committees were in place, almost all Syrians, Somalis and Eritreans whose claims had been rejected at first instance were granted international protection at second instance. While many refugees continued to avoid the Greek asylum system due to problems with access, inadequate reception and integration policies, these reforms nevertheless contributed to restoring refugees' trust in the system to some extent.

The hotspot approach

The reforms to the Greek asylum system must be seen in the context of the so-called refugee crisis of 2015 when almost one million people from Syria and other countries arrived in Greece via Turkey, mostly through the Eastern Aegean islands, and moved on through the mainland and Western Balkans to other EU States. This situation increased political pressure within the EU for a more restrictive asylum and immigration policy, which resulted in the 2016 EU–Turkey agreement. Under this agreement, all new irregular migrants arriving on Greece's islands – who would then be transferred to the 'hotspots' that operate on the major Eastern Aegean islands – would be returned to Turkey. Although the General Court of the European Union subsequently ruled the agreement not binding,[6] Greek law and practice changed overnight in order to comply with the agreement's commitments.

RSD claims made on Greece's mainland are carried out on a merit-based, individualised basis, irrespective of an applicant's nationality. However, applications that are lodged on the Eastern Aegean islands by Syrians arriving from Turkey by sea after the entry into force of the agreement are examined on admissibility on the basis (set forth in the EU–Turkey agreement) that Turkey is a

safe third country to which they can be returned. Until the end of 2019 applications by persons of non-Syrian nationalities (which have a recognition rate of higher than 25%) were rejected on inadmissibility grounds based on the above practice, although this began to change slightly in 2020. This practice is discriminatory and unfair, since the admissibility criterion is applied with respect to the applicant's nationality and date and point of entry.

Rejections of claims made by Syrians arriving from Turkey under the above scheme are made on the basis of a standard template decision which applies identical reasoning to each case and is based on a general, vague perception of safety. This runs counter to the requirements placed on States that applicants be treated equally, are not discriminated against, and have their personal fear of persecution or serious harm given appropriate consideration. Moreover, risk of *refoulement* is not seriously assessed and, as my own experience and others' findings show, many decisions are based on country of origin information (COI) that does not reflect the current political situation nor the actual treatment of refugees in Turkey. In addition, transit in Turkey that lasts merely a few weeks or months, without access to effective protection, is considered sufficient to establish an adequate link between the person and the transit country, resulting in rejection of the claim. This concept further distorts the true meaning of the 1951 Convention – which does not require that refugees arrive directly from their country of origin to the host country.[7]

In overturning some of these negative decisions, the independent Appeals Committees rebutted the presumption of safety in the light of the individual facts and circumstances of each case, and through a more careful assessment of available COI.

However, soon after the launch of the new asylum system, questions were raised about the fair and independent character of the authorities. A further reform in June 2016 introduced, among other aspects, restrictions on the right to a personal hearing on appeal, transfer of the competency for granting humanitarian status from the Appeals Committees to the Minister of the Interior, and undue pressure being placed on NCHR for very rapid recruitment of experts (and, where they were unable to comply within the timeframe required, appointments being made directly by the Minister). It also altered the composition of the independent Appeals Committees, whereby the two members of each Committee were to be administrative judges, with only one UNHCR/NCHR expert member remaining. Furthermore, expertise in asylum/immigration/human rights was downgraded from being a necessity for appointees to being an asset only. Committees are also now exempt from the obligation to submit periodic reports to the Greek Ombudsman, which raises concerns as to the effective control of the administration.

Eighteen members of the Committees – almost a third of total members – publicly complained about these reforms, calling into question the independence and impartiality of the new scheme and criticising the non-conformity of the EU–Turkey agreement with established European and international human rights legislation and decisions.[8] The replacement of experts with members of the judiciary who lack the required experience and expertise remains controversial. At the time of writing, the remaining expert member of the Appeals Committee has been replaced by a further administrative judge, meaning the composition is now fully judicial. The Greek Council of State has ruled the reforms to be in conformity with the Constitution and human rights. In so doing, it has accepted the legality of decisions based on an acceptance of Turkey as a safe country, which has generated considerable controversy among legal practitioners and academics.

Questions about EASO's role

After the EU–Turkey agreement, teams from the European Asylum Support Office (EASO) were deployed in the Greek hotspots to provide assistance and expertise to the Greek Asylum Service in the management of asylum applications. However, their competencies have been significantly extended beyond their original remit. They now carry out admissibility interviews; conduct interviews

as part of the regular procedure (examining the merits of claims); act as rapporteur within the Appeals Committees; issue opinions based on applicants' personal files; and carry out other application processing duties. Their role in the procedure creates fundamental rights challenges.

Based on the above, the European Ombudsman has expressed concerns about the extent of EASO staff involvement in assessing asylum applications in the hotspots and about the quality and procedural fairness of admissibility interviews. It has also found that, because of the de facto influence that EASO's involvement has on the decisions taken by EU Member States' asylum authorities (forbidden under EASO's founding Regulation), the organisation is being "encouraged politically to act in a way which is, arguably, not in line with its existing statutory role".[9] Moreover, the fact that EASO staff do not have the same level of independence as do members of the Appeals Committees further undermines the procedural guarantees.

COVID-19 and other threats

The COVID-19 pandemic has led to the suspension of RSD registration and interviews in Greece and created additional obstacles to effective legal aid and representation which have further affected the right to an effective remedy. The examination of pending appeals has continued despite the practical inability for applicants to meet with lawyers, and for asylum files to be obtained in good time and preparations made before the examination of the appeal. Despite this, lawyers report pressure being placed on them by caseworkers not to participate in interviews because of social distancing requirements, meaning some interviews may have taken place without applicants having legal representation. In the meantime, hundreds of applicants in the hotspots have had their claims rejected.

The restrictive approach to protection, as seen in the current RSD procedure and hotspot policy, goes hand-in-hand with Greece's ongoing construction of new closed camps – now as a response to the pandemic, and following the fires which destroyed Moria camp – its abolition of humanitarian status, and the further degradation in the quality and independence of the country's system. Recent press coverage hints at potential changes, including the asylum service becoming involved in the return of those whose asylum claims have been rejected. The Greek Vice-Minister of Immigration and Asylum has requested that the EU introduce a *refoulement* clause which can be applied by over-burdened frontline EU States at their own discretion.[10] For the time being, the EU turns a blind eye to the widespread reports of pushbacks in Greece and elsewhere in the EU. This demands reflection on how the need for a National Plan on Asylum and Migration for Greece emerged in the first place, and what steps need to be taken to assure the fairness and independence of its RSD now.

Angeliki Nikolopoulou
annikolopoulou@yahoo.com
Attorney At Law, Thessaloniki Bar Association
www.linkedin.com/in/angeliki-nikolopoulou-a957941b6/

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2. AIDA (June 2013) *National Country Report: Greece*, p22 www.asylumineurope.org/reports/country/greece

3. UNHCR Greece (2013) *Syrians in Greece: Protection Considerations and UNHCR Recommendations* www.refworld.org/pdfid/525418e14.pdf

4. Asylum Information Database, Greece Country Report June 2013 www.asylumineurope.org/reports/country/greece; see also UNHCR (2014) 'Greece as a Country of Asylum' www.refworld.org/pdfid/54cb3af34.pdf

5. The NCHR is an independent institution providing advice and guidelines to the Greek State on human rights protection.

6. General Court of the European Union, 'Press release No 19.17' bit.ly/GeneralCourt-press-release-19-17

7. UNHCR (2017) *Summary Conclusions on Non-Penalization for Illegal Entry or Presence: Interpreting and Applying Article 31 of the 1951 Refugee Convention* www.refworld.org/docid/5b18f6740.html

8. https://thepressproject.gr/epistoli-melon-epitropis-prosfugon/

9. European Ombudsman 'Decision in case 735/2017/MDC', 7 July 2018 www.ombudsman.europa.eu/en/decision/en/98711; see also FRA (2019) *Update of the 2016 opinion of the European Union Agency for Fundamental Rights on fundamental rights in the 'hotspots' set up in Greece and Italy* bit.ly/FRA-opinion-update-hotspots-2019

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