

## **The asylum procedure in Greece and aspects of the right to an effective remedy**

According to the provisions of the legislation, which is currently into force (Presidential Decree 81/2009), the examination of asylum applications is carried out in a single instance degree procedure before the competent administrative authority. In case of a negative decision, applicants have the right to lodge an application for annulment with the Council of State.

In particular, asylum applications are received and examined by police directorates throughout the country. These authorities refer the applicant to a Refugee Committee to be interviewed. The Refugee Committees are established within the Aliens Directorates of Attica and Thessaloniki and within each Police Directorate of the country. They are four-member advisory boards, composed by a high-ranking police officer of the Greek Police as chairperson and an officer or warrant officer of the Greek Police, an official of the Aliens and Immigration Directorate of the respective Region and a representative of the United Nations High Commissioner for Refugees as members. The Refugee Committee issues a non-binding recommendation to the Police Directors competent to issue the final administrative decision on the asylum application. This decision can be challenged, as aforementioned, before the Council of State.

The Presidential Decree 81/2009 aimed at improving the asylum procedure, essentially in achieving the decentralization of the administrative authorities entrusted with the task of receiving and examining the asylum applications. This aim, however, was not achieved, the overwhelming majority of asylum applications still being submitted to the Aliens Directorate of Attica. On the other hand, the aforementioned Decree abolished the second instance degree of the administrative examination of applications, while assigning the competence of first instance decision to the Police Directors and downgrading the role of the Refugee Committees from a decision making to opinion giving body. These provisions aggravate the system's structural shortcomings. The

United Nations High Commissioner for Refugees has expressed its concern on the impartiality of the Refugee Committees and an application for annulment against the provisions of the P.D. 81/2009 is pending before the Council of State.

The Greek Ministry of Citizen Protection has been working, since November 2009, on the restructuring of the asylum procedure. Within this framework, a law and two presidential decrees are being prepared. The new legislation has not yet entered into force, but from the draft provisions the following can be deduced as basic principles of the new asylum procedure : The competence for the examination of asylum applications is assigned to a new, independent from the Police, Asylum Authority. The examination of the applications is carried out in a two instance procedure. The draft presidential decrees provide for an administrative appeal against the first instance administrative decision as well as for special transitional rules for the processing of the existing large backlog of asylum claims.

Regarding the system of judicial review of administrative decisions on asylum cases by the Council of State, the following must be noted : The application for annulment has no automatic suspensive effect, but provisional protection can be granted, if harm of an irreversible nature is likely. The Court examines the legality of the decision. It must be pointed out that the extent of the judicial review goes further than the mere examination of the correct interpretation of the law by the administrative authorities. The correct implementation of the law in each particular case is also examined. Thus, the Court has the possibility of examining the substance of the claim through the review of the reasoning of the administrative decision and the control of possible material error. The Court examines if all substantial allegations of the asylum claimer have been sufficiently taken into consideration by the administrative authority. The relevant date for assessing the legality of the decision is that of its issuance. However, facts which occurred after the administrative decision may – at least in some extent – be taken into consideration through the review of the decision's reasoning. The remedy may lead to the annulment of the administrative decision. The case then will be referred back to the administrative authority to review its decision, given that the Court cannot

substitute its own judgement on the merits of the asylum application to that of the competent administrative authority.

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