

# Practical Guide on Asylum Procedures for Women in Greece

**Definition of key terms, procedures  
and rights of asylum seekers  
and recognized refugees**

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# I. Introductory Note

This practical Guide has been prepared in an effort to further enhance the response capacity of public officials and State agencies towards gender-based violence (GBV) among refugee populations. Newcomers are often survivors of unusual forms of GBV (traditional harmful practices, like female gender mutilation [FGM] and honor crimes, forced and early marriage, rape, and sexual harassment both during their journey and stay in temporary accommodation structures). Building a better response to their needs, while taking into considerations the particularities of their refugee status and the process of asylum, is an essential part of the Protection response.

The aim of this Guide is to not only provide State agents with the necessary legal knowledge and tools for a more effective case management, (incl. PSS and legal counseling) but most crucially, to sensitize and contribute to a better understanding of the position of the “woman refugee” that they are going to refer or who will be referred to them. It is only with this new awareness and taking into account also the legal parameters that the strategy plan for case management developed together with the GBV survivor can be effective. The purpose however of the Guide is not to provide public agents with legal expertise in order to be in the position to provide legal information, as that can only be provided by specialized legal professionals in terms of a refugee’s legal case management.

We hope that this effort, which started with a brief training that took place on 24 and 25 June 2016 within the framework of the Project «Attica Region Protection/GBV Response» with the support of GSGE (General Secretariat on Gender Equality) and CREI (Centre on Research on Equality Issues - KETHI) will help to promote the protection of women. It is hoped that the guideline will be broadened with future actions to further enhance and strengthen the knowledge and skills of State agencies and other public structures in order to respond to current challenges as part of the refugee response in Greece.

We would like to thank particularly our colleague Dr. Eleni Kalampakou for her valuable remarks and Dr. Danai Angeli for reviewing the current English version of the Guide.

## II. Introduction to the terminology and forms of international protection

Each state has the responsibility to protect its own citizens, as well as to guarantee the fundamental rights of all persons that find themselves in its territory. There are international conventions that establish particular responsibilities on the States that have signed them, as well as rules of international customary law that bind States.

The Geneva Convention of 1951 and the Additional Protocol of New York of 1967 further establish the obligation of the contracting States to provide protection to persons that are not their citizens, but fulfill certain criteria in order to be regarded as refugees, i.e. persons that are in need for international protection.

Those criteria must be met **accumulatively**, thus, even if one is not met, the person may not be recognized as a refugee. This does not mean that the person does not need other forms of international protection, as is analyzed immediately below (subsidiary protection).

### i. Definition of “refugee” according to Geneva Convention 1951:

- **Anyone** (i.e. anyone who enters in a state member of the Convention, irregularly or not, has the right to apply for asylum – international protection).

*“Thus it is argued, being a woman is a sufficiently political statement in itself, so far as violence against women, domestic, sexual or public, is part of the process of oppression.”*

*Guy S. Goodwin – Gill, The refugee in International Law, 2nd Edition, Oxford University Press, p. 363. However, that opinion found no followers regarding the interpretation of the Geneva Convention.*

- **Because of well-founded fear of persecution** (the term prosecution has no connection with penal persecution, but refers to the serious harm, in terms of violation of fundamental rights or cumulative discrimination, while this fear must be justified, i.e. real at the grade of severe possibility).

- **On the ground of race, religion, nationality, being a member of a particular social group or political beliefs** (“persecution” must be connected to one of the “grounds” of the Convention. If this nexus (causal link) is missing, the refugee status may not be granted).

• **Finds himself /herself outside of the country of citizenship (nationality) and cannot, or because of that fear, does not want to enjoy the protection of that country or of the country of his/her previous habitual residence.** (*Attention must be paid to the fact that the protection of the country of origin must be shown not to be effective. When the alleged “persecution” stems from the State itself, it is not necessary to examine this condition. However, if the alleged danger comes from an individual or groups of individuals, then, in order for state protection to be regarded as efficient [and the relevant asylum claim to be rejected], the opportunity of the citizen to ask for police or judicial protection is in itself not sufficient. The protection system must also be accessible and efficient. For example, the state X may provide by law the right to press charges against the perpetrator of GBV, however, according to objective and reputable sources of Country of Origin Information – COI– there is high percentage of officers’ corruption and high cost of applying judicial remedies. Subsequently there is high possibility the protection system of state X to be regarded as inefficient for the case of the particular female applicant).*)

## ii. Internal Flight or Relocation Alternative

Although the standards above may be met, the asylum seeker may not yet be granted refugee status, if there is a viable internal relocation or flight alternative within his/her country. For example, if a woman is persecuted by an organized criminal group in the north of country and it is likely that the police can protect her in the south part of the country, where she can relocate near her relatives that live there and can support her to find a job, then she may not be granted international protection.

The UK Upper Tribunal examined this option judging upon the case of a woman GBV survivor from Pakistan, who applied for international protection on the basis of the risk of being arrested and jailed for adultery.<sup>1</sup> Although the Upper Tribunal found her allegations credible and accepted that they amount to past persecution, it dismissed her appeal, regarding her internal relocation in Pakistan as viable and assessing as weak the possibility to be tracked by her husband.

*The decision of granting refugee status is of a declaratory character. Refugees hold this characteristic, as long as they meet the Convention’s standards and the procedure of examination of the relevant claim aims only to the recognition of such status, which substantially pre-exists.*

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1. *KA, AA, & IK Pakistan v. Secretary of State for the Home Department*, CG [2010] UKUT 216 (IAC), United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), 22 April 2010, available at: <http://www.refworld.org/docid/4c3ed00d2.html>

### iii. Burden and Standard of Proof of Refugee Claim

Due to the frequent lack of written evidence to corroborate an application for international protection (which is in rule missing due to the nature of a refugee's journey), the asylum seeker's credibility in the development of his/her claims during the oral interview, which is conducted in the country of reception, is a crucial element for the formation of the judgment by the competent authority. Very often, elements of the claimant's record that are not obviously connected to his/her allegations may nonetheless be of significance as circumstantial evidence. By way of illustration, a person may be afraid of his/her country's authorities, but nonetheless have some dealings with those authorities such as with the embassy. This may be an indication of lack of danger for persecution in his/her country of origin but does not in itself suffice to prove the lack of danger. For those reasons, the examination of the claimant's allegations during the asylum interview must be thorough, the necessary explanations must be asked for by the case-worker and provided by the applicant, and possible contradictions and inconsistencies must be pointed out by the case-worker as they may be indicative of a mistruth. On the other hand, it must be seriously taken into account that in particular cases of vulnerable persons who have experienced traumatic incidents, some inconsistency and confusion may be normal and these effects may be expressed through vague references, contradictions, inconsistencies, and lack of temporal sequence.

In cases of women or other individuals that have suffered severe forms of GBV in their country of origin or in the country of reception, it is vital for them to be informed and aware of the process, in order to make it possible for them to support their application and not feel they must conceal crucial aspects of their experiences. That empowerment is essential both in cases where the GBV that the claimant suffered constitutes her central claim for persecution and where it appears to be just loosely connected with it. This is also true even where the claimant has suffered GBV in the country of reception, as its consequences may prohibit her to develop freely her claims regarding her need for international protection. State officials and public agents who have been trained on GBV are often aware of the fact that at the first meeting with a GBV survivor they will manage to register only part of her record and that only after sequential meetings and the development of a trusting relationship with the woman will the latter feel more secure to share more sensitive information on her traumatic experiences. It should be noted, that in the asylum procedure the interview is rarely postponed or divided into sessions. Thus it is crucial, at this phase of the interview before the authority, the asylum seeker to be properly prepared, to feel informed and supported, in order to be in a position to effectively represent her experiences and fears.

Of course the principle of the consent and the respect of the applicant's will must be fully applied throughout the process; meaning that if finally the woman does not want to disclose sensitive information or narrate them in detail, no GBV



actor may press her to do so, even if it is obviously crucial for the success of her asylum claim.

#### iv. Exclusion Clauses

The Geneva Convention excludes from its protection<sup>2</sup> individuals for whom there are serious reasons to believe that they:

- a) have committed crimes against peace, war crime, or crime against humanity
- b) have committed a serious felony of common penal law, while being outside the country of asylum and before they are granted refugee status.
- c) are responsible for actions against the purposes and the principles of United Nations.

#### v. Prima Facie Refugees

The examination of asylum claim is by rule individualized.

However, in case of a mass influx of refugee populations due to war in the country of origin, mainly because the country of reception is incapable of examining all of the claims on an individual basis, refugee status may be granted without an interview (“fast track” process), with the perspective that in the future all of the cases will be examined with the regular individualized procedure. This practice applies currently to Syrian refugees in Greece, provided that they have entered Greece before 20.3.2016 and that they can prove their Syrian origin (i.e. if they hold a Syrian passport).

#### vi. Subsidiary Protection

Another form of international protection is subsidiary protection. That form of protection acts complementarily to the Geneva Convention protection. It is foreseen in EU law and is granted by the EU member states mainly in cases where the Convention’s ground for persecution may be missing but the applicant comes from a country where indiscriminate violence or armed conflicts are raging as a result of which the total unarmed population is in danger; in other words, in such cases the danger cannot be justified on an *individual basis*. Additionally, this form of protection may also be granted if the claimant is in danger of bearing degrading or inhuman treatment, upon return to the country of origin but is nonetheless not eligible for refugee status, because the ground of persecution (religion, race, ethnicity, membership in a particular social group, political beliefs) is missing. In such cases, the possibility of harm must be real and concrete and not abstract. For example, the percentage of civilian deaths in relation to the population of the

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2. Those clauses may not apply, in case of a danger of suffering degrading and inhuman treatment upon return in the country of origin. The ECHR has interpreted the protection from the treatment above, according to art. 3 of European Convention on Human Rights, as absolute and not open to exceptions.

region can be invoked, to weigh the level of probability for the risk of serious harm regarding the average resident.

## **vii. Referral to the Ministry of Interior for Humanitarian Residence Permit**

Besides the international protection (refugee status and subsidiary protection) described above, there is the possibility of providing national protection, according to the national legal framework. According to that, if the asylum application is definitely rejected, the competent appeal authority (at 2nd instance) may refer the administrative file to the Ministry of Interior, provided that it considers that there are severe circumstances that either require the stay of the claimant in the country or impede the applicant's removal from the country. The usual reasons that the decisions of Committees of Appeal invoke within the Greek context are health issues and the protection of private and family life (article 8 ECHR) [*e.g. applicants that prove thorough knowledge of the greek language, previous irregular stay in Greece for several years, integration in society and labour market, have created family in Greece and have children that go to school etc.*].

## **viii. Particular Social Group**

### **LGBT (Lesbian, Gay, Bisexual, Transgender) individuals**

Given the composition of the refugee population in Greece, the majority of which are of Afghan and Syrian origin, the information provided below refer to those two countries.

According to Home Office of UK, that regularly issues guidance notes on various international protection issues, LGBT persons form a particular social group (PSG) in *Afghanistan* within the meaning of the Refugee Convention because they share a common characteristic that cannot be changed and have a distinct identity which is perceived as being different by the surrounding society. However, although LGBT persons form a PSG, this does not mean that establishing such membership will be sufficient to be recognised as a refugee. The question to be addressed in each case is whether the particular person will face a real risk of persecution on account of their membership of such a group.<sup>3</sup> Regarding *Syrian Arab Republic*, Freedom House, an independent U.S. non – governmental organization, reports that Syrian law discriminates against LGBT (lesbian, gay, bisexual, and transgender) people; according to the 1949 penal code, «unnatural sexual intercourse» is punishable with up to three years in prison. Sep-

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3. United Kingdom: Home Office, *Country Information and Guidance - Afghanistan: Sexual orientation and gender identity*, February 2016, Version 1.0, available at: <http://www.refworld.org/docid/56d53fc54.html>

arately, there were multiple reports in 2015 of IS executing men for their perceived sexual orientation.<sup>4</sup>

It must be however not forgotten, that each asylum claim is examined on a pure individual basis and the membership of a particular social group (such as LGBTI) does not automatically imply the grant of international protection.

## Women

The position of women in *Afghanistan* regarding public sphere, as well as their risk of bearing discriminations and SGBV is analysed in several guidelines and reports of INGOs and competent Authorities.

Particularly, according to the UNHCR's relevant guidelines report, significant sectors of the population, including women, children, ethnic minorities, detainees, and others, reportedly continue to experience numerous human rights abuses by various actors.<sup>5</sup> Women human rights defenders, women in the public sphere, women perceived as "westernized", women relatives of targeted individuals, women journalists, women over the age of 16 who are of sound mind and who are accused of blasphemy and other categories are at high risk of being targeted by state and non-state actors.

Sexual and gender-based violence against women in Afghanistan reportedly remains widespread. Such violence includes "honour killings", abduction, rape, forced abortion and domestic violence. As sexual acts committed outside marriage are widely seen in Afghan society to dishonour families, victims of rape outside marriage are at risk of ostracism, forced abortions, imprisonment, or even death. Societal taboos and fear of stigmatization and reprisals, including at the hands of their own community and family members, often deter survivors from reporting sexual and gender-based violence. At the same time, incidents of self-immolation as a result of domestic violence continued to be reported. Government authorities continue to refer most complaints of domestic violence to traditional dispute resolution mechanisms. Women and girls who flee their homes due to abuse or threats of forced marriage are often themselves accused of vaguely defined or even undefined "moral crimes", including adultery (*zina*), or "running away from home". Men responsible for the domestic violence or forced marriages reportedly almost always enjoy impunity, while many women in these circumstances are convicted and imprisoned, in violation of international human rights standards and jurisprudence. In addition, since women are usually economically dependent on the perpetrators of domestic violence, many women are effectively prevented from raising complaints; they have few options but to continue to live in abusive situations. Access to justice for women seeking to report violence is

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4. Freedom House, *Freedom in the World 2016 - Syria*, 7 June 2016, available at: <http://www.refworld.org/docid/575aa7cd11.html>

5. UN High Commissioner for Refugees (UNHCR), *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, 19 April 2016, HCR/EG/AFG/16/02, available at: <http://www.refworld.org/docid/570f96564.html>

further hampered by the fact that women police officers constitute less than two per cent of all police officers in the country. Women police officers are reportedly themselves at risk of sexual harassment and assault in the workplace, including rape by male colleagues. They are also at risk of violent attacks by AGEs (Anti – Government Elements). Impunity for acts of sexual violence is further reported to persist due to the fact that in some areas of the country, alleged rapists are powerful commanders or members of armed groups or criminal gangs, or have links to such groups or influential individuals who protect them from arrest and prosecution.(see above, UNHCR Guidelines for the situation in Afghanistan).

According to UNHCR<sup>6</sup>, the situation of women in Syrian Arab Republic is dramatically affected by the ongoing conflict as they are increasingly exposed to a range of violations from different parties to the conflict on the basis of their gender. Thousands of women have reportedly been killed as a result of shelling in civilian areas, the use of snipers, during raids and massacres. Others are being detained, taken hostage, subjected to torture and sexual or other violence, used as human shields or subjected to harsh interpretations of Shari'a law. An increasing number of women and girls are becoming the primary or sole caretakers for their families due to their male family members' injury or disability, detention, disappearance, death, participation in the conflict or inability to move for fear of arrest, detention or summary execution at checkpoints. These women and girls face specific hardships in rebuilding their lives and caring for their families amidst increased risk of abuse and exploitation.

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6. UN High Commissioner for Refugees (UNHCR), International Protection Considerations with regard to people fleeing the Syrian Arab Republic, Update IV, November 2015, available at: <http://www.refworld.org/docid/5641ef894.html>

### III. Basic information on asylum process at 1st and 2nd instance

At 1st instance the competent Authority to examine the asylum claim is the Asylum Service, which consists of the Central Asylum Service and the Regional Asylum Services (which include the Regional Asylum Offices, as well as independent and mobile units in various areas of the country).

The asylum application is lodged in person by the claimant him/herself and cannot be submitted by an attorney or by another member of the family. In case of an application submitted by spouses, the Asylum Service creates a common file, but the interviews are conducted separately and in privacy. The claims are examined independently regarding their justification, but if one of them is successful, the spouse and the under-aged children may also benefit therefrom. In general, the decision is commonly applicable to all the members of the family although the allegations are outlined and evaluated separately.

According to Article 23 para. 2 a) of Presidential Decree 141/2013 «To the family members of the beneficiary of refugee status, in the name of which one has submitted the claim for international protection, the same status is granted, except if they do not desire it or if it is not compatible with a status that they already have.»

The interview is conducted by a case worker, an officer of the Asylum Service, who issues the decision at 1st instance. The information provided by the applicant is confidential, however the Service maintains its responsibility (under the Criminal Procedure Code) to forward to

the competent law enforcement authorities information on offenses prosecuted ex officio (such as domestic violence, if it occurred on Greek soil or human trafficking). In practice the extent of the exercise of this competence by the Asylum

*If the wife, during the interview, wishes to reveal information that she does not want the other spouse to know, she runs the risk that that information can be revealed to him on notification of the decision, which is common, since the decision mentions briefly the allegations of the applicants. For instance, if she discloses violence in the family, the husband could be able to read about this in the notified decision. Even in case of a decision granting refugee status that the Asylum Service notifies and includes only the extract of the decision with its conclusion, the applicants reserve the right to ask for the body copy of the full decision, thus the spouse will have access to the allegations the wife wishes to keep secret.*

*For that reason it is recommended, in case of separation between spouses (even after the registration), to ask the Asylum Service to separate the cases of the spouses, in order to ensure that the information that the wife wishes to remain confidential will not be revealed to the spouse.*

Service is not known. The applicant has the right to choose the gender of the case worker and interpreter.

The asylum claims are examined through the fast-track or the regular process. If the claimant is not detained, the usual reason for applying the fast-track process is a manifestly unfounded application, either because he/she comes from a country with low percentage of refugee recognition, or because during the initial

*Due to the mass influx of refugees and their temporary accommodation in the open facilities in Greece, the system of pre-registration is currently being applied in mainland, by mobile units of the Asylum Service, that record the personal details of the refugees and the category of their claim (regular asylum process, relocation or family reunification). The basic registration card that they are issued with, does not provide them with a work permit or verify their asylum status. However, it does safeguard the individual from deportation and detention because of irregular stay. The card is valid until the full registration through the asylum process, as described above.*

registration (before the interview) it is clear that the case is not connected with the protection that the Geneva Convention provides or with the subsidiary protection (e.g. a citizen of China, who mentions that she came to Greece because she is divorced and wanted to immigrate). The application in the fast-track process is being processed in a speedy manner with shorter deadlines (for instance the time limit for lodging an appeal is shorter, 15 days instead of the 30 days of the regular process - art. 61 L. 3275/2016).

## **i. Process**

### ***First Instance: Asylum Application, Registration, First Interview, & Notification with Asylum Services***

Anyone who wishes to apply for international protection must lodge an asylum application. This can generally be done by attending the Asylum Service on a fixed date of appointment. Currently the appointments are scheduled through

skype, on specific dates and time per nationality, in order to ensure the respective interpretation. The relevant information is available at the website of the Asylum Service [<http://asylum.gov.gr/>]. Information on the full registration of pre-registered claims is available at: [http://asylo.gov.gr/?page\\_id=3517](http://asylo.gov.gr/?page_id=3517).

After having obtained an appointment date in this manner, the applicant appears before the Asylum Service on the prescheduled date and his/her application is registered. During the registration, basic information is asked, regarding his/her family status, his/her national/ethnic origin, the names of his/her relatives, and -amongst other information -he/she is asked to report briefly the reasons why he/she left from his/her country of origin and is not willing to return. Obviously, this registration does not replace the subsequent asylum interview, but if the applicant does not mention at this stage a crucial allegation which he/she will mention during the interview, his/her credibility is in practice often undermined.

After the full registration, **the applicant is issued with an asylum seeker's card** (in the same day) and the date of the interview is set, on which he/she is expected to appear in person and explain his/her allegations in detail. Any request to postpone the interview (e.g. for the proper preparation of the case) is examined strictly, in order to ensure the speedy examination of the applications, however the case is often postponed for health reasons, for pregnant women with health issues and for women with newborn babies. If a case is complicated or additional information has to be provided (either by request of the service, or upon the applicant's initiative), the interview may continue for a second day.

About one month after the interview, the decision is issued and the applicant is notified by the Regional Asylum Office where the claim was lodged and examined. Usually the applicant is notified over the phone that the decision is ready. If the decision grants refugee status, only an extract of it is shared with the applicant. If the decision provides subsidiary protection or is rejecting the claim, then the body of the full decision is included. In the latter case, the body of the decision also mentions the time-limits to lodge an appeal at 2nd instance (15 days in fast-track and 30 days under the regular process). Exceptionally, if the applicant is under an Identification and Reception Process, the time-limit is even shorter – art. 61 L. 4375/2016). Upon notification of the decision, the Asylum Service retains the asylum seeker's card. The applicant whose claim is rejected remains without the applicant's card until he/she submits an appeal at 2nd instance. Normally this can be done at the same day that he/she receives the rejecting decision but sometimes the Asylum Service encourages the applicants to come back after some days (and before the expiry of the deadline) in order to handle the burden of appeals.

*Pre-registered GBV survivors may face difficulty in asylum process, if they no longer possess the document they initially received, after their separation from their husband. Service providers should recommend to all women to carry their own pre-registration card always or at least a photocopy of it. Otherwise they may need to fix a new appointment through skype for full registration. In case the wife – GBV survivor wishes to avoid meeting her husband at the asylum service, it is possible to schedule a new appointment, after informing the asylum service.*

### **Second Instance: Submitting an Appeal**

The appeal at 2nd instance is lodged before the same Service, with the presence of an interpreter, mentioning briefly the grounds against the decision of 1st instance. It may be also accompanied by an analytical memo explaining the grounds of the appeal. At the same day the Asylum Service defines a specific date on which the Committee of Appeal will examine the case, usually without a new interview. At the same time, the **asylum seeker's card is returned to the applicant.**

It is obvious that legal aid at this point is helpful because the applicant may need to highlight particular aspects of his/her claim and provide clarifications. Additionally, against the COI (country of origin information) that the rejecting decision mentions in order to doubt the credibility of the applicant or to justify the lack of danger for him/her, objections may be raised only on the basis of other credible sources of COI that only a legal expert can provide.

The Appeals Authority is in charge of examining the asylum applications at 2nd instance for the whole country. The appeals are being examined by three-member Committees that belong to that Authority. The process is as a rule written and only exceptionally is the applicant invited for an oral interview before the committee. Most often this occurs if there are crucial allegations in the 1st instance interview that need further clarification.

The application is also examined at 2nd instance on its merits. The appellant can provide the appeal committee with additional evidentiary material before the date of the examination of his/her case.

### ***After the definite rejection of the asylum claim: Appeal with Administrative Court of Appeal***

A negative decision by the Committee of Appeal can be challenged before the Administrative Court of Appeal within 60 days. The latter may issue interim measures and provide temporary judicial protection from deportation until the case has been examined; otherwise the applicant is at risk of deportation.

In case of a negative decision, the Appeals Committee is also competent to refer the administrative file to the Ministry of Interior, in order for a humanitarian residence permit to be issued, as mentioned earlier.

## **ii. Implicit or explicit withdrawal from the asylum claim**

The applicant can at any time withdraw his/her application for asylum (art.47 L. 4375/2016). However, under the following circumstances he/she is presumed to have explicitly withdrawn his/her application in case he/she:

- a. has not responded to claims for providing crucial information;
- b. did not attend his/her personal interview at 1st or 2nd instance, although legally invited and without having provided any reason for his/her absence;
- c. left the place where she/he was detained or did not comply with the imposed alternative measures;
- d. left from his/her place of residence without asking for a permit or informing the competent authorities in case he/she had the relevant obligation or left the country without notifying the relevant authorities of reception;
- e. did not comply with the obligation to hand in his/her passport or other ID document in case he/she possesses it or did not inform about moving to a different address or breached any other obligation of communicating or



obligation to produce a document of which demonstrably is or should be in possession; or

- f. did not show up to renew the card on the next working day after the expiry of it.

In the cases exhaustively listed above, a decision to cease the examination of the claim is issued. However, the applicant reserves the right to ask only once, within 9 months from the issuance of the act of pause (or the declaration of withdrawal), for the continuation of the examination of his/her case.

### **iii. New/Fresh asylum application (following)**

In exceptional cases, where the applicant presents new crucial allegations, he/she has the right to lodge a new application after the rejection of his/her application at 2nd instance. If found admissible, this fresh application is examined on its merits. While waiting for the admissibility assessment, the applicant is protected from deportation, but is issued no asylum seeker's card and consequently does not enjoy the rights that are attached to it (Article 59 L. 4375/2016).

## IV. The rights of asylum seekers and recognized refugees

### i. Refugees that have not yet applied for international protection

The Third Country Nationals (TNCs), who have not yet applied for international protection, have the same legal position regarding private and social rights as that of the migrants with irregular stay in Greece. There is however diversified police measures in case of control for residence permit. For example, a citizen of Pakistan with irregular stay in Greece would be arrested, detained and issued with a deportation decision. A citizen of Afghanistan would also be detained and issued with a deportation decision, but would finally be released with a 30 days time limit to return voluntarily to Afghanistan. A citizen of Syria would not be detained, but would be issued with a 6-month postponement of return, as the Authorities regard the return to Syria as impossible for the time being.

### ii. Pre-registered Refugees

The pre-registered refugees have expressed typically their will for international protection, or relocation, or family reunification, however, their claim has not yet been fully registered. Practically they are protected against deportation and detention for irregular stay, but they are granted no further rights as those of an applicant's for international protection. They just hold a card (similar to the applicant's card) which writes "simple registration" (in contrary to full registration) and notices "without right to work".

#### **More specifically:**

**Regarding access to education**, this is safeguarded in an absolute way to *all minors* in Greece, independent of the legal status of the parents.

**Regarding access to justice**, in principle, no right to stay in the country is required. However, for any procedure before the police, the possession of documents that prove legal stay in Greece is necessary, or else the irregular foreigner is at the risk of administrative detention. Even in cases where a third party, and not the victim, lodges a complaint for an ex officio prosecuted crime and hence the testimony is sufficient to trigger a police investigation (and possibly the arrest of the perpetrator), in order to complete the file the testimony of the victim will eventually be requested. If until then the latter has not legalized his/her stay in Greece nor holds an asylum seeker's card and does not testify for that reason, the case may be archived, without any further penal steps. **For that reason it is**

**recommended to lodge a complaint before the prosecutor directly, if the victim's stay in Greece is not regularized.** In that case though, the perpetrator will not be arrested immediately, the complaint must be already prepared in written in Greek and an interpreter must be present.

Interpretation during all penal procedures regarding cases of violence against women must be provided by the state, according to EU legislation. However, there are few women in the official list of judicial interpreters (it is characteristic that there is no woman interpreter for farsi) and in practice difficult to respond immediately to the police officer's call.

**The individuals that wish to divorce** must submit the relevant legal remedy to the court, through a lawyer. For that (and for any judicial process) no residence permit or asylum card or applicant's card is required. However it is a very complicated procedure, as the person must provide the judge with the documentation proving the marriage and family status (properly verified and translated) and the judge may apply the foreign law (the law of the country of origin) as far as it is not controversial to fundamental principles of the greek legislation (e.g. regulations that undermine the position of the woman and do not respect the gender equality). For that reason the person must also provide the judge with a legal opinion of the "Institute of foreign law" which costs 600-800 euro. This will probably be the greatest obstacle for such a process.

**In case of need for interim measures** (e.g. for temporary custody of the children) from the court, the law provides the application of the greek law, but such a decision arranges the case only in a temporary manner.

*Therefore, no permission to work, to study (as an adult) or to get married is provided to irregularly staying Third Country Nationals. The only difference of the pre-registered individuals is that they are protected from deportation and detention for irregular stay in Greece.*

*The law provides that the victims of specific crimes are entitled to apply before the Minister of Interior for a residence permit on this ground alone, on the condition that the competent prosecutor has initiated the criminal prosecution. However, this requires that the individual either has not already applied for international protection or will withdraw from the asylum claim.*

**Birth registration** remains problematic in particular in cases of asylum-seekers whose claims has not been formally registered yet, as they often cannot prove in an unequivocal manner their family status (married or not) and their personal details. Currently the foreign documents that are required must be verified by the competent greek embassy and officially translated in greek.

### iii. Holders of the card of an applicant for international protection

According to Article 41 para. 1 L. 4375/2016, **asylum seekers' cards:**

«[...] D. a) are provided free of charge by the competent Reception Authority, immediately after the registration of the application in accordance with Article 36 para. 1 with the claimant's for international protection card, which bears a photograph.

b) The applicant's international protection card is a temporary title, gives no right to a residence permit, ensures the enjoyment of rights of applicants, where this is provided for in the relevant provisions, secures during the validity time necessary dealings and allows them to remain in Greek territory.

c) The card may refer to restriction of movement of applicants in a part of Greek territory, following a decision of the Director of the Asylum Service.

d) The card is valid for one year and renewable until the completion of the administrative procedure for examining the application for international protection. If a card is issued after the simple registration of the application, according to par. 1 (b) of Article 36, it is valid until the date set for the full registration under paragraph 1 (a) of that Article.

e) A decision of the Director of the Asylum Office may reduce the duration of asylum cards according to the country of origin (...)"

***It is noticed that simple registration is already taking place in terms of the pre-registration process which has already started in the Open Facilities for the temporary accommodation of refugees in mainland (art. 36 L. 4375/2016).***

#### **Access to the labor market**

Art. 71 L. 4375/2016:

«The **applicants** for international protection, after the completion of the procedure of lodging their application for international protection, according to the relevant provisions and provided that they possess a valid asylum seeker's card or an applicant's for international protection card, issued on the basis of art. 2 f. id' of P.D. 113/2013 (A' 146) of the art. 41 para. 1 (d) of the law hereby and art. 8 para. 1 f. d' of P.D. 114/2010 respectively, have the right to access to the **dependent work** or the **provision of services or project.**»

### ***Access to health services***

Art. 14 P.D. 220/2007:

«1. Free necessary medical and hospital care is provided to the applicants, on the condition that they are uninsured and financially weak. This care includes: a. Laboratory and medical examinations in public hospitals, health centers and regional clinics, b. Provision of medicines after prescription of doctors that are serving at the foundations of the previous section, verified by the Direction thereof, c. Hospital care in state hospitals, including hospitalization in bed of 3rd category 2. First aid is on any case free of charge for the applicants. 3. The applicants with disabilities, according to the art. 17 of this law, receive specialized medical care. (incl. pregnant women).

### ***Verification of signature***

Art. 41 para. 2 L. 4375/2016:

«During the process of examination of the applications for international protection, the competent authorities verify the authenticity of the asylum seekers' signature upon the demonstration of the card. In case of detention, staying in the facilities of the Reception and Identification Service or appliance of art. 60, the competent authorities verify the authenticity of the applicants' signature according to the declared personal details.»

### ***Marriage***

The applicants for international protection cannot get married in Greece, as for the issuance of a permit for marriage a final and not temporary residence permit is necessary.

### ***Naturalization***

Registered asylum-seekers are not entitled to apply for naturalization.

### ***Dealing with the Authorities***

Registered asylum-seekers have the right to deal with the tax and insurance authorities.

#### **iv. International protection beneficiaries (Recognized refugees and subsidiary protection beneficiaries)**

**Recognized refugees enjoy the same private and social rights with the locals. Beneficiaries of International protection include the category of beneficiaries of subsidiary protection, which has fewer rights than the recognized refugees, especially on the field of reunification with the family members that are still in the country of origin.**

##### ***Regularization of the stay of members of the international protection beneficiaries' family***

As family members are regarded (art. 2 P.D. 141/2013):

- i. The spouse or partner with whom he/she has a stable relationship according to the Greek legislation
- ii. The underage not married and dependent children (under 18), no matter if they are born inside marriage or are adopted.
- iii. The children above 18, who suffer from mental or physical disability, and cannot lodge a personal application,
- iv. The father, the mother or other adult that is responsible of taking care of the international protection beneficiary according to the Greek legislation or practice, if the beneficiary is a minor and not married.

(art. 24 para. 5 P.D. 141/2013).

The family members of the beneficiary of international protection, provided that the family is created after his/her entrance in Greece, and within the territory, are

issued with a residence permit, with the same duration as that of the beneficiary. The beneficiary is obliged to provide the marriage act, or the birth registration act or the recognition of the child, except if the family members do not wish to benefit from that status or the status is not compatible with the status they already have.

***In case of separated families whose members are in the greek territory, though spread throughout Greece, they are legally regarded as a united family, provided that they have declared the relevant information to the competent Authorities.***

##### ***Access to labor market***

Art. 69 L. 4375/2016:

Para. 1: «The beneficiaries of international protection, who possess the necessary valid residence permit, have access to dependent work, provision of services or project, as well as independent professional activity, on the same conditions that are provided for locals.»

Para. 3: «3. The same rights for dependent work, provision of services or project, as well as independent professional activity, have also their family members, who possess a valid residence permit, according to art. 23 para. 2(b) of P.D. 141/2013 or art. 24 para. 4 of P.D. 96/2008 (A' 152), on the same conditions that are provided for locals. The family members of beneficiaries of international protection who came to Greece in terms of family reunification have the same rights as above, provided that they possess a valid residence permit, as well as any foreigner that got married to a beneficiary of international protection and as long as the marriage is valid.»

### **Adults' education**

Art. 71 L. 4375/2016:

«The beneficiaries of international protection and the holders of a humanitarian residence permit, as well as their family members, provided they possess the relevant residence permit, may be registered to educational programs for adults, that are related to work and vocational training, on the same conditions that apply to the locals. **In case they cannot provide the required documentation, they submit a declaration of L. 1599/1986 (A' 75).**»

Art. 29 para. 1 P.D. 141/2013: Beneficiaries of international protection enjoy equal treatment with Greek citizens concerning the recognition of foreign diplomas, certificates and other evidence of formal qualifications.

### **Travelling abroad**

The holders of a three-year residence permit, which includes beneficiaries of international protection, have the right to ask for a travel document, which is issued by the Passport Directorate of the Headquarters of the Greek Police. With that they can travel as tourists within Schengen area and stay abroad for a maximum period of 3 months within a period of 6 months.

The beneficiaries of subsidiary protection can use the travel document of their country of origin, if they possess such. Otherwise they have the right to ask for a Greek travel document, which will be provided only if they cannot obtain a national passport from the embassy of their country of origin.

Exceptionally and only for serious health reasons a Greek travel document may be issued to an applicant for international protection, i.e. an asylum seeker, if it is manifested that he or she needs to travel to another country.

In order for beneficiaries of international protection to have the right to reside and work in Schengen area, they need to possess the long-term resident's permit which requires previous 5 year-stay in Greece, sufficient income, know the Greek language and to follow further the particular administrative process. This category of permit is issued by the Decentralized Administration and does not entail the loss of the recognized status of international protection.

## **v. Holders of a residence permit for humanitarian reasons**

Art. 69 para. 2 L. 4375/2016:

«The individuals that enjoy humanitarian status on the basis of para. 3 of the article 68, have the right to access dependent employment and services or project provision, on the same conditions as the locals.»

Art. 69 para. 4 L. 4375/2016:

«The family members of the holder of the humanitarian residence permit have the right to access to dependent employment and services or project provision, provided that they hold a valid residence permit of the art. 28 para. 4 of P.D. 114/2010, the art. 8 para. 1 P.D. 61/1999 (A' 63) or art. 25 para. 4 L. 1975/1991 (A' 184), as well as the foreigners, who while residing legally in Greece have been married to a holder of a humanitarian residence permit in the sense of para.3 of art. 68, and as long as the marriage is valid. Access to labor market is gained on the same conditions that apply to the locals. ».



## V. Relocation and family reunification process

The relocation to another EU member state, in order for an asylum claim to be examined by that country, is only applicable for those nationalities that have throughout the EU a recognition rate for refugee status of 75% or higher.

Currently, it is primarily Syrians, Eritreans, and Iraqis that have such high percentage of recognition.

It has been agreed that under this scheme about 66.000 individuals will be relocated within two years from Greece to other EU Member States.

Further defining criteria when applying for relocation include: vulnerability, family connections, and language skills, the consideration of which aims at ensuring smooth integration into the country of reception.

The application is submitted at the Asylum Service, which corresponds officially with the competent authorities of the other countries.

### ***Family reunification with family members that are in the country of origin.***

Only recognized refugees (and not asylum seekers or beneficiaries of subsidiary protection) have the right to apply for a visa to invite the members of their family that are left behind in the country of origin and under the condition that they submit documentation proving that they can financially maintain and accommodate their family members. Exceptionally, if such a reunification application is submitted within three months of recognition as a refugee, these preconditions are not required. In the Greek administrative practice, this is a time-consuming process, which demands proof of the existence of the relative family ties, verified in any proper manner, for instance via DNA examination if there is blood affinity.

In such cases P.D. 131/2006 is applicable, as well as P.D. 167/2008, which replaces some of the regulations of the latter, both aiming at the harmonization of the internal legislation with the Directive 2003/86/EU.

It is noteworthy that family members that are eligible for reunification with a recognized refugee are as follows:

- The adult spouse and their common minor children
- The non-common children of them, of which the spouse has the custody

*Until June 2016, there were 6.905 applications for relocation pending, from which 3.014 successful applicants are included in scheduled flights. However, only 2.735 individuals have been actually relocated.*  
*[[http://asylo.gov.gr/wp-content/uploads/2016/08/Relocation-procedures-up-to-31.7.16\\_gr.pdf](http://asylo.gov.gr/wp-content/uploads/2016/08/Relocation-procedures-up-to-31.7.16_gr.pdf)]*

- The adult unmarried sons/daughters (common or not) provided that they cannot take care of their own needs, because of health reasons.
- The parents, provided that the latter declare that they have been co-residing and were provided for by the refugee before they arrived in Greece and they are in lack of any family support in the country of origin and
- His/her partner, with whom he/she reserves a stable long relationship sufficiently proved.

The documentation for the above process that is required is:

- a. Application
- b. A recent family certificate, or other document officially translated into Greek and verified by the competent Greek authority, from which the family bond with the invited family members, as well as their age is clear. If the refugee cannot provide the documentation above, the authorities that are responsible for receiving and examining the asylum claim, may take into account other proper documentation. A negative decision may not be grounded exclusively on the absence of such documentation.
- c. Accurate copy of the travel documents of the family member(s).

If the relevant application for family reunification is not submitted within 3 months since the granting of refugee status, the following documentation is required:

- i) certificate from a public social insurance service, which proves that the refugee is completely insured against sickness and all other risks foreseen for the relevant categories of local employees and also covers the family members that are going to be sponsored by him/her or
- ii) tax note from the tax authority or any other official document, from which it is proven that his/her annual income is stable and sufficient for himself/herself and his/her family's needs and which does not come from the social welfare system of the country. This income may not be lower than the annual income of an unskilled worker, increased by 20% for the wife/husband and by 15% for each parent and child and
- ii) verified contract of buying a house or rental contract of a house, verified by a public financial service or any other verified document that proves that the refugee can provide accommodation that will cover his/her own and his/her family housing needs.

The documentation above is required for the family reunification process with the parents of the recognized refugee, as well.

## ***Admission of family members that are in another EU country (Dublin Regulation III)***

The Regulation above establishes the criteria and the mechanism for defining the Member State that is responsible for examining the asylum claim that is being lodged in an EU Member State by a third country national or by a stateless person.

As «family members», provided that the family already pre-existed in the country of origin, are regarded the following family members, who are present in the territory of EU member states:

- The spouse of the applicant, or the partner with whom he/she maintains a stable relationship, provided that the law or the practice of the respective member state recognizes the unmarried couples in a similar way as that which regards the married couples of Third Country Nationals,
- The under-aged children of the couples of the first category or of the applicant, on the condition that they are unmarried, no matter if they were born inside the marriage or not or are adopted, according to the national law,
- when the applicant is a minor and unmarried, the father, the mother or any other adult that is responsible for the applicant, either according to the law, or because of the practice of the member state where the adult is,
- when the beneficiary of international protection is a minor and unmarried, the father, the mother or any other adult that is responsible for the applicant, either according to the law, or because of the practice of the member state where the adult is,

As «relatives» are regarded according to the Regulation: the adult uncle or aunt or the grandfather or the grandmother of the applicant, who are present in the territory of the EU member states, no matter if the applicant was born inside a marriage or not or is adopted, as it is defined by the national law.

If one member of the family of the applicant, no matter if the family relations had been created previously in the country of origin, has been issued a residence permit by a member state as a beneficiary for international protection, this member state is responsible for the examination of the application for international protection, provided that the persons of concern have expressed their will in writing.

If one member of the family of the applicant has lodged a claim for international protection in a member state and this has not yet been examined on its merits at first instance, this member state is responsible for the examination of the application for international protection, provided that the persons of concern have expressed their will in writing.

When, because of pregnancy, recent childbirth, serious illness, severe disability or advanced age, an applicant depends on the help of the brother/sister or his/her parent that is legally residing in a member state or a child legally residing in a member state, the brother/sister or parent of an applicant depends on the applicant's help, the member states may put together or reunify the applicant with the child, brother/sister or parent, on the condition that the family relations

existed already in the country of origin, that the child, brother/sister or parent is able to take care of the dependent person and that the concerned persons have expressed their will in writing.

When the child, brother/sister or parent resides legally in a member state, different than this where the applicant is, the state where the child, brother/sister or parent resides legally is responsible, except if the health of the applicant does not allow him/her for a long time to go to the relevant member state. In that case, the member state, where the applicant is, is responsible. That member state is not obliged to bring the child, brother/sister or parent at its own territory.

## VI. Example of Cases

### CASE 1

**Facts:**

The applicant was a single female from Iraq who claimed asylum in Sweden in 2008.

The basis for her asylum claim was the generally insecure situation for Mandaeans in Iraq and the threat of being forcibly remarried as she was a divorcee. She also sought to rely on her status as a single woman with no social network in Iraq, and that she was living in a relationship with a Muslim Iraqi in Sweden which would not be accepted by her family or the Iraqi society.

The applicant's case was rejected by the Swedish Migration Board, which found that neither the general situation in Iraq for Mandaeans nor her personal circumstances constituted grounds for asylum, and her deportation to Iraq was ordered. The Migration Court upheld the decision of the Board and the applicant subsequently exhausted all domestic legal remedies. In a judgment dated 27 March 2014, the Fifth Section of the Court unanimously held that the implementation of the deportation order against the applicant would not violate Article 3 ECHR, provided that she was returned to the Kurdistan Region of Iraq (KRI). It found that although she would be at risk of treatment contrary to Article 3 in other parts of Iraq, due to her status as a single female without the protection of a social network or male relatives, and the additional characteristic of being a member of a small religious minority; it was viable for her to safely relocate to the KRI which was relatively safe and respected the rights of religious minorities including Mandaeans. On 8 September 2014 the case was referred to the Grand Chamber at the applicant's request.

On 15 October 2014 the Migration Board granted the applicant a permanent residence permit in Sweden. It considered that while she was not a refugee, she was deserving of protection based on the prevailing general security situation in Baghdad and her status as a female without a social network in Iraq who also belonged to a religious minority. As hundreds of thousands of Iraqis had fled to the KRI within the space of a few months, there was no internal relocation alternative.

**Decision & Reasoning:**

As the applicant had been granted permanent residence in Sweden, there was no longer a risk of expulsion to Iraq, or the associated potential risk of violation of Article 3. The applicant no longer wished to pursue her application and had no objection to the Court striking out her case.

The Court had regard to the fact that the applicant did not intend to pursue her application, under Article 37(1)(a) ECHR, and found that the matter had been resolved within the meaning of Article 37(1)(b) ECHR.

There were no special circumstances regarding respect for human rights which required the continued examination of the case by the Court.

Therefore the application was struck out of the Court's list and Rule 39 interim measures that had been in place preventing the deportation of the applicant until final judgment were discontinued.

**Outcome:**

Case struck out of the list pursuant to Article 37(1)(a) and (b).<sup>7</sup>

## CASE 2

**Facts:**

The case concerned a Nigerian national from the Edo State who was forced into prostitution after being trafficked into France. She later reported to the police the names of those involved in the prostitution network and applied for asylum. Fearing that if returned she would be suspected of prostitution, which is illegal in Nigeria, the applicant further claimed that she would be ostracized by her social and familial network, that she had breached the social contract given that she had not repaid the debt for her journey to Europe and that she would be viewed as being cursed by the community in light of a ritual ceremony in Nigeria which marked her allegiance to the trafficking network.

Stating that whilst the victims of trafficking would be viewed upon disapprovingly by Nigerian society, given that the majority of female victims were later prostitutes in Europe, the French Office for the Protection of Refugees and Stateless People (OFPRA) found that this was not enough to constitute a particular social ground in accordance with the 1951 Geneva Convention and the Qualification Directive. Moreover, the Office considered that no information had been furnished to suggest that the victims of trafficking were submitted to persecutory acts if returned to Nigeria and, thus, refused the applicant's asylum application.

This argumentation was later rejected by the Appeals Board (CNDA) in an decision dated 29 April 2011. The case was subsequently brought before the Council of State by the French Office for the Protection of Refugees and Stateless People (OFPRA). Quashing CNDA's decision the Council of State found that the former should have investigated whether, beyond the procuring networks from which they were at risk, surrounding society or institutions perceived women in the

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7. <http://www.asylumlawdatabase.eu/en/content/ecthr-wh-v-sweden-application-no-4934110-8-april-2015#content>

situation of the applicant as having a particular identity that would constitute a social group within the meaning of the said Convention.

The case was then sent back to the CNDA for its reconsideration.

### **Decision & Reasoning:**

Turning first to the question of the particular social group, the French National Court of Asylum examined Article 10 of Directive 2011/95/EU and noted that a social group comprises persons who share an innate characteristic which cannot be modified. As a result, society perceives the group as being different. The CNDA went on to note that females from Nigeria undergo a “juju” ritual which scars the body and marks their entry into the trafficking network. Moreover, the years of exploitation in Europe that they are submitted to along with the ensuing threats if they try to leave the network leads the CNDA to find that such women have a common background that cannot be changed.

Secondly, the Court noted that credible international reports document that where a young female Nigerians return home from Europe without any money, they are immediately suspected of prostitution, which is perceived extremely poorly by local communities. This perception leads to social alienation. The Court went on to conclude that female victims of human trafficking from the State of Edo share a distinct identity, which they are unable to rid themselves of and thus such females should be considered as a particular social group in accordance with international and European law.

Lastly, the Court turned to the debt owed by the applicant to a highly respected cult in the community, who had threatened the applicant’s physical integrity, as well as the discrimination faced if returned, and the severe risks of reprisals presented to the applicant for denouncing the prostitution ring. Highlighting that such actors are very powerful and enforce a customary justice in the region, the Court further considered the lack of effective administrative and judicial protection as placing the breaks on any real investigation into criminal activities, such as trafficking.

### **Outcome:**

On account of the applicant’s membership in a particular social group and her actions against the network, the Court set aside OFPRA’s decision and granted the status of refugee to the applicant.<sup>8</sup>

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8. <http://www.asylumlawdatabase.eu/en/case-law/france-national-asylum-court-24-march-2015-decision-no-10012810#content>

## CASE 3

### **Facts:**

The Applicants were Afghani nationals of the Shiite religion. The first Applicant was born in 1991 and her daughter was born in 2010. The husband/father of the Applicants is also an Afghani national of the Shiite religion. The first Applicant travelled to Germany with her daughter in January 2011 and applied for asylum. The following grounds were put forward in support of her application:

The families of the Applicant and her current husband were neighbours in a city in Afghanistan where they met and fell in love. The Applicant's father was not in favour of the relationship and wanted her to marry a considerably older cousin. She therefore decided to flee together with her current husband. His family were also against this elopement and marriage. The Applicant had lived in Afghanistan up until her departure in 2009. She then moved to Iran with her current husband where she was married and gave birth to her daughter. After staying in Iran for six months, the family travelled via Greece to Germany.

### **Decision & Reasoning:**

The Applicants were recognized as refugees on the grounds of their threatened persecution based on gender. The first Applicant left her home due to a justified fear of an arranged marriage and the fear that returned she would be exposed to reprisals by her father.

The risk of an arranged marriage in Afghanistan, which is widespread in the country particularly for underage girls, may constitute grounds for refugee status for women. The Constitution and legislation of Afghanistan are increasingly upholding women's rights. However, in most cases, this has had little effect on actual living conditions and women continue to suffer discrimination in many respects.

In the social sphere, an orthodox interpretation of Sharia and patriarchal codes of honour still determine the situation of women and girls. In the Applicant's religion in particular, an extremely traditional code of behaviour restricts the freedom of movement and actions of women and girls to a large degree. Due to the inferior position of women in Afghanistan, domestic violence in the form of beatings and abuse is widespread. Around 60% of marriages in Afghanistan are believed to be child marriages and up to 80% of all marriages are thought to be arranged. Fleeing from an arranged marriage can result in honour killings. If a woman escaping from an arranged marriage enters into a pre- or extramarital relationship with another man, it is not only the woman who is at risk of a crime of honour but also her own children and the other man.

On the basis of the information provided by the Applicant, it was concluded that she was a victim of persecution according to clause 60 (1) (5) of the Residence Act in conjunction with Article 9 of Directive 83/2004/EC. The act of an arranged



marriage itself, with which she was threatened, and the maintenance of this marriage constituted a violation of Article 12 of the European Convention on Human Rights according to which men and women have the right to enter into marriage and start a family. This right also includes the negative freedom not to be obliged to marry if this does not correspond to a personal wish. Arranged marriages and the obligation to remain in an arranged marriage also violate the right to private life according to Article 8 of the European Convention on Human Rights. Furthermore, arranged marriages violate Article 16 (2) of the Universal Declaration of Human Rights according to which a marriage may only be concluded on the basis of the free and unlimited will of both future spouses. The main actor of this threatened persecution was the father of the Applicant. He is a significant non-state actor within the meaning of Article 6 (c) of Directive 83/2004/EC: since acts of persecution may, without limitation, stem from single individuals.

The Applicant was not able to obtain protection from the state, sufficiently influential parties or national or international organisations (Article 7, Directive 83/2004/EC). More specifically, the Afghan state was found not to be in a position to offer protection against arranged marriages by non-state actors. The Applicant benefitted from the shifting of the burden of proof in relation to the likelihood of persecution according to Article 4 (4) of Directive 2004/83/EC as she was under direct threat of an arranged marriage. The Applicant's fear of persecution even intensified following her escape as, according to her statement, she was afraid that her father would kill her if she were to return because he believed that she had sullied his and his family's honour.

There were also no domestic flight alternatives according to Article 8 of Directive 2004/83/EC. The Applicant could not be expected to remain in Kabul or elsewhere in Afghanistan in the long term in order to escape from her father's threats. It could be assumed that the family would not be able to maintain a level of subsistence in Kabul. The Applicant's husband was neither wealthy nor particularly qualified. It was not possible to feed a family with two small children in Kabul on the basis of temporary jobs.

If it transpired that the Applicant was eligible for deportation protection, then this protection would also apply to her daughter as she was under threat of her grandfather's blood vengeance.

### **Outcome:**

The Applicant was granted refugee status according to clause 60 (1) of the Residence Act.<sup>9</sup>

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9. <http://www.asylumlawdatabase.eu/en/case-law/germany-administrative-court-gelsenkirchen-18-july-2013-5a-k-441811a#content>

## CASE 4

The Italian Tribunale civile di Cagliari granted refugee status to a citizen of Nigeria, finding that the Female Genital Mutilation – FGM constitutes a form of Gender Based Violence. Thus she was granted refugee status at second instance, as it was accepted that the state of Nigeria, despite the legal amendments, is incapable of protecting sufficiently the women from that danger.<sup>10</sup>

### **Facts:**

The Applicant, of Guinean nationality and Fula origin, stated that she was the victim of a forced marriage. After the death of her parents she and her two younger sisters went to live with her paternal uncle. She was obliged to give up her work as a nurse. Her uncle and aunt forced her into marrying a friend of her uncle's. She refused and managed to run away on the evening of the religious ceremony. The Office of the Commissioner-General for Refugees and Stateless Persons (CGRS) of Belgium refused to recognise the Applicant's refugee status on grounds that her account was not credible. The CGRS based its decision on three grounds: objective information (forced marriage is a marginal phenomenon in Guinea and almost inexistent in urban areas); incoherent statements by the Applicant (as to the reason why her uncle wanted to force her into marriage); and lack of action on the part of the Applicant to attempt to prevent the marriage or to put an end to it. In relation to the medical documents lodged at the time of her asylum application testifying to a type III excision and a deinfibulation, the CRGS held that at no time had the Applicant expressed a fear linked to genital mutilation in the event of returning to her own country, either on her own initiative or when questions had been put to her in relation to her medical evidence.

The Applicant appealed against this negative decision.

### **Decision & Reasoning:**

The CALL rejected the argument that the Applicant had not declared having undergone a serious genital mutilation. The CALL found that the persecutions alleged by the Applicant were clearly established by the medical evidence lodged on file, which testified to the seriousness of the excision undergone (type III: infibulation) as well as the consequences arising from this mutilation. The CALL held these acts directed against persons on account of their gender to be a persecution within the meaning of Article 1 A of the Refugee Convention.

During the hearing before the CALL, the Council expressly questioned the Applicant on the subject of the excision. She explained that, at the age of 7, she had undergone a type III excision, and that she had been deinfibulated by a doctor in Guinea during a training period as part of her nursing studies. Given the permanent trauma caused by this mutilation, as well as the physical after-effects

retained by the Applicant, the CALL reiterated that the fact that an Applicant has already suffered serious harm is considered a serious indicator of his/her well-founded fear of being persecuted, in accordance with Article 57/7bis of the Belgian law of 15 December 1980 regarding the entry on the territory, the stay, the settlement and the removal of aliens (transposing Article 4, section 4 of the Qualification Directive).

As the agent of persecution was a non-state actor, the CALL then considered whether the Applicant could expect effective protection from the Guinean authorities. Given the Applicant's profile and the fact that it was likely she would have to return to a family who rejected her, the CALL concluded that she could not rely on protection from the national authorities if she were to return to Guinea. Finally, the CALL connected the Applicant's fear of persecution to her membership of a particular social group. Referring to the jurisprudence of the former PRAC (Permanent Refugee Appeals Commission) and of the UNHCR Guidelines on membership of a particular social group, the CALL decided that acts of sexual violence towards persons - such as genital mutilation - could be inflicted solely because of their gender. In such situations, the CALL decided that 'membership of a particular social group', in this case, Guinean women, should be applied as a reason for persecution.

**Outcome:**

Appeal allowed: recognition of refugee status.<sup>11</sup>

## CASE 5

### A decision – example of bad practice:

In Case No. 1412142, [2015]<sup>12</sup> the Australian Administrative Appeals Tribunal accepted no connection of the domestic violence - that the Turkish woman applicant had suffered - to her gender. Although it found the woman credible, regarding her statements for the violent behavior of her husband, it notices: "However, the Tribunal is not satisfied that the applicant's partner would harm her for reason of her membership to this group. The applicant described the circumstances in which her partner would harm her. These were situations where she questioned or challenged him, for example when she insisted that she would go out with friends or when she questioned him about the gun he had. Her description suggests that he was generally a violent, aggressive person and that there was a very personal dynamic within the relationship leading him to

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11. <http://www.asylumlawdatabase.eu/en/case-law/belgium-council-alien-law-litigation-17-october-2012-no-89927#content>

12. AATA Case No. 1412142, [2015] AATA 3566 (24 October 2015), Australia: Administrative Appeals Tribunal, 24 October 2015, available at: <http://www.refworld.org/docid/579a05884.html>

harm her because of his own violent tendencies, his drug problem, mental health issues and his desire to control her rather than because she is a woman in Turkey.” Although the Tribunal accepted the appeal of the woman (accepting other legal arguments), it is characteristic that the opinion that violence against women can occasionally be a matter of private sphere and not related to her gender, but to the personality and the character of the perpetrator, is still being reproduced by national authorities, while assessing asylum claims of GBV survivors.

## VI. Conclusion

It is obvious that much must be done in order to ensure the rights of women during asylum process, as well as the fair adjudication of their claims for international protection. Some countries (e.g. Romania, Sweden, UK, Belgium and Italy) have developed national Guidelines on Gender-related asylum claims (however they are not legally binding documents and do not cover all topics regarding the assessment of gender-related claims), while others refer to the existing international conventions and guides especially of UNHCR<sup>13</sup>. In Greece, the General Secretariat for Gender Equality and UNHCR published in 2011 a Guide on the protection of Women and Girls during first reception and asylum process<sup>14</sup>. Nevertheless, it seems that it is less the scarcity of guiding material and more the lack of specialized training of the competent officials, which marginalizes the gender factor when assessing a gender – related asylum claim.

**Geneva Convention 1951 remains though the supreme reference point for every asylum process.** The timelessness of the Geneva Convention is due to the fact that it is a “living” document, the interpretations of which vary (turning expandable) with the passage of time. The “humanitarian spirit” is the prism through which the dynamic interpretation of its content develops.

It is not surprising that gender became recognized as a ground of persecution several decades after the signing of the Convention, as there was more attention globally directed toward gender inequalities. The special provision on the procedural guarantees granting international protection especially for women is provided by EU and national law.

This does not mean that the protection of women has been achieved. It is a continuing challenge to empower them to become agents of the process, to support their claim and to follow their own strategy and decision. Gender-based violence in the refugee population may be found in new or specific forms for their context in the country of origin as well as during the displacement and stay in another country, but has the same root, the social origin i.e. the unequal power relations between the genders.

*Until June 2016 there were 12.370 cases still pending at the greek Asylum Service. The percentage of successful cases (grant of international protection) was 26,6%.*

13. [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2012/462481/IPOL-FEMM\\_ET\(2012\)462481\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2012/462481/IPOL-FEMM_ET(2012)462481_EN.pdf)

14. [https://www.unhcr.gr/no\\_cache/prostasia/gynaikes.html?cid=1068&did=1165&sechash=6f37542d](https://www.unhcr.gr/no_cache/prostasia/gynaikes.html?cid=1068&did=1165&sechash=6f37542d)

The consideration of refugee women's vulnerability as constructive requires also considering the other side of the recognition of their power, as they manage to carry out the journey, with all the additional risks for them and their children. Therefore, an approach which is not paternalistic, but rather recognizes their deliberate action and avoids the adoption of the approach "we and you", is required. This should be a client-centered/survivor-centered approach that seeks to inform the person of their options and risks/consequences and helps to support them in their decisions.

## VII. Useful Information

### **Internet Links:**

<http://asylum.gov.gr/> (Asylum Service)

<http://www.firstreception.gov.gr/> (First Reception Service)

<https://www.unhcr.gr/ypati-armosteia-toy-oie-gia-toys-prosfyges.html> (Greek Office of UNHCR)

