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icon for border procedures

Many applications for international protection are made at the border of a country or in a transit zone before an applicant gains entry into the territory. In well-defined circumstances under the recast APD, a Member State can handle the application directly in such a location, either to assess its admissibility or to fully determine the case on the merits of the application.

In 2022, Finland and Greece initiated changes to their legislative framework on border procedures. The Finnish government submitted a legislative proposal to the parliament suggesting the introduction of a border procedure. The procedure could be triggered by a government decision if an exceptionally large number of migrants arrive in a short period of time or if hybrid activities aiming to exploit migration were directed against Finland. The procedure would allow authorities to process potentially unfounded asylum applications at the border. The procedure could not be applied to vulnerable applicants if they cannot be guaranteed the special support they need.348 The legislative proposal forms part of a more comprehensive legislative package of proposed amendments, which aim to ensure that the country is prepared in case of hybrid activities.349 However, the parliament did not manage to consider the proposal by the end of the electoral term (29 March 2023) and it was allowed to lapse. The next government will decide if the changes will be proposed again.

The Finnish Refugee Advice Centre commented on the plans and highlighted, for example, that remote interviewing should only be applied in this procedure if the applicant consents. The organisation underlined that an applicant’s access to legal aid should clearly be guaranteed. The centre also emphasised that detention should remain a last resort, and alternatives to detention should be prioritised.350

The application of the Joint Ministerial Decision that provided for the application of the exceptional border procedure in Greece was not renewed after 31 December 2021. Since the beginning of 2022, the general provisions of Law No 4939/2022, Article 90(1)-(2) apply. The government noted that the change was necessary, as the number of applications decreased and a mass influx no longer existed. Following the change, according to the law, border procedures apply only to applicants for international protection who arrive on the islands of Lesvos, Chios, Samos, Kos and Leros and live in a RIC or a CCAC. The border procedure can be applied for the period of the reception and identification procedure, for a maximum of 25 days.

The Greek Refugee Council observed that legal aid practitioners in Lesvos reported that, since June 2022, the Regional Asylum Office (RAO) automatically applied non-border procedures for applicants for whom the first instance decision had not been notified within 28 days from registration, without however issuing any decision for a referral to the normal procedure (as it is not foreseen in the law, according to RAO). In these cases, the deadline for the appeal is automatically extended as follows: for admissibility, the 10 days convert automatically to 20 days and for eligibility they are extended from 10 to 30 days. This practice is based on Article 95(2) of Law No 4939/2022, however the Joint Ministerial Decision regulating this procedure was not issued for 2022. In Kos during 2022, all asylum applications were examined under the border procedure, regardless of whether a first instance decision had been issued and served to asylum seekers within 28 days of the registration of the application.351

A report by Equal Rights Beyond Borders, HIAS Greece and Refugee Support Aegean observed delays in the registration of asylum applications and often there was too little time between the summons for the interview and the interview itself. The organisations highlighted delays in vulnerability assessments and expressed concern that interviews were conducted before this assessment, and thus, special procedural guarantees could not be applied.352

In France, the border procedure was applied during the disembarkation of 234 people from the ship Ocean Viking in November 2022. While unaccompanied minors (44 minors) were taken directly into care by the child protection system, the remaining persons (190 people) were placed in a waiting zone and their asylum applications - if there was any - were examined under the border procedure. In total, 66 persons had their asylum application considered as not manifestly unfounded. However, a total of 186 people were eventually admitted by the judicial or administrative authorities to the territory to register their asylum application and were referred to accommodation.

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- 349Ministry of the Interior | Sisäministeriö. (2022, June 8). Amendments to Border Guard Act help prepare for incidents. https://intermin.fi/-/rajavartiolain-muutoksilla-parannetaan-hairiotilanteisiin-varautumista?languageId=en_US
- 350Finnish Refugee Advice Centre | Pakolaisneuvonta. (2022, May 23). Asia: Luonnos hallituksen esitykseksi eduskunnalle laiksi ulkomaalaislain muuttamisesta (EU:n turvapaikkamenettelydirektiivin mukaisen rajamenettelyn käyttöönotto ja soveltaminen Suomessa) [Subject: Draft Government proposal to Parliament for an Act amending the Aliens Act (introduction and application of the border procedure under the EU Asylum Procedures Directive in Finland)]. VN/8021/2022-SM-3. https://www.pakolaisneuvonta.fi/wp-content/uploads/Lausunto-SM_HE_Luonnos-hallituksen-esitykseksi-eduskunnalle-laiksi-ulkomaalaislain-muuttamisesta-23.5.22.pdf
- 351AIDA Greece. (2023). Country Report: Greece - 2022 Update. Edited by ECRE. Written by Greek Council for Refugees. https://asylumineurope.org/wp-content/uploads/2023/06/AIDA-GR_2022-Update.pdf
- 352Equal Rights Beyond Borders, HIAS Greece, & Refugee Support Aegean. (September 2022). The State of the Border Procedure on the Greek Islands. https://rsaegean.org/wp-content/uploads/2022/10/BorderProcedure_Greek_islands_report.pdf

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