ELA Case Referred to the CJEU: Access to Effective Legal Remedies in the asylum procedure

9 April 2026

A case litigated by Equal Legal Aid has resulted in a preliminary reference to the Court of Justice of the European Union (CJEU), raising a fundamental question about access to effective legal remedies in the asylum procedure in Greece.

Under EU and Greek law, asylum seekers whose application for international protection is rejected at first instance are entitled to free legal aid—provided by lawyers included in the legal aid register maintained by the Asylum Service—to challenge that decision and to benefit from a full and *ex nunc* assessment of their application for international protection at the second instance.

However, in this case, the applicant's appeal was rejected as inadmissible for being out of time, despite this being due to no fault of his own. Although the applicant had requested, within the statutory deadline, the appointment of a lawyer by the Asylum Service and had exercised due diligence in pursuing his case, the appointed lawyer failed to contact him and did not submit the appeal within the prescribed time limit, a failure that cannot be attributed to any extraordinary or unforeseeable circumstance (i.e., force majeure).

In 2022, with the support of a lawyer collaborating with ELA, the applicant filed an application for annulment before the Administrative Court of Thessaloniki, seeking to safeguard his fundamental rights and prevent the risk of being returned to a country where his life would be in danger without a substantive examination of his appeal.

The Administrative Court of Thessaloniki, with decision 72/2026, referred the case to the CJEU for a preliminary ruling with the following question:

Whether it is compatible with the right to an effective remedy for an administrative appeal against a first-instance decision rejecting an application for international protection to be dismissed as out of time where the requirements laid down in Greek law have not been complied with, namely, the obligation to inform the appellant of the lawyer appointed to represent them and to ensure effective communication between the appellant and the lawyer, and where the appointed lawyer has failed to act with the required due diligence.

The case raises fundamental concerns about access to effective legal remedies in the asylum procedure, particularly where applicants risk removal without their claims being examined on the merits due to failures attributable to state-appointed legal representatives. Perhaps most notably, the scale of this problem is growing: the number of out-of-time appeals has been increasing sharply the past three years: In 2022, 1,096 appeals (18% of inadmissible decisions) were dismissed as out of time, rising to 1,523 (30%) in 2023, 1,526 (33%) in 2024, and 1,732 (49%) in 2025.

Number of Decision: ΑΔ 72/2026

Administrative Court of First Instance of Thessaloniki

11th Three-Member Chamber

It sat in public session at its courtroom on 22 May 2025, composed as follows: Stefanos Zoukας, President of the Administrative Court of First Instance, Alexandra Tzellou (rapporteur), and Stergios Kofinis, Judges of the Administrative Court of First Instance. The court clerk was Ourania Lera, judicial officer to hear the application for annulment filed on 21 January 2022 (registration no. AKY44/21.1.2022) of B.M., son of M., a national of Guinea, resident of Thessaloniki, … Street, who did not appear, against the Minister of Migration and Asylum, who also did not appear.

With the present application, the annulment is sought of decision no. …/20.9.2021 of the 3rd Independent Appeals Committee of the Ministry of Migration and Asylum (sitting in a single-member formation).

Following the public hearing, during which the case was examined by reference to the report of the rapporteur (Article 33(2) of Presidential Decree 18/1989), the Court deliberated in chambers in a room of the Court and,

Having examined the relevant documents,

Considered as follows:

1. Whereas, the prescribed court fee was duly paid for the lodging of the application (see the electronic fee with payment code 446645287952 0225 0017 and the payment receipt dated 27.12.2021).

2. Whereas, by the present application, which is lawfully brought for hearing following the publication of decision ΑΔ …/2022 of the Court suspending the proceedings and the resolution of the legal issue concerning the constitutionality of assigning to a judicial officer the functions of a single-member administrative body within the Independent Appeals Committees (see the Announcement of the President of the Council of State dated 3.12.2024 regarding the preliminary question raised by decision ΑΔ 534/2022 of the Administrative Court of First Instance of Thessaloniki, and, subsequently, Council of State plenary decision No. 1150/2025), is sought the annulment of decision no. …/20.9.2021 of the 3rd Appeals Committee of the Ministry of Migration and Asylum (sitting in a single-member formation), by which the applicant's appeal against decision …/13.1.2021 of the Thessaloniki Regional Asylum Office was dismissed as inadmissible (having been lodged out of time) and, ultimately, his application for international protection was rejected. By the same decision, the applicant's return was ordered (without granting a period for voluntary departure). The present application is, in general, considered admissible and must therefore be examined further as to the grounds raised therein.

3. Whereas, furthermore, the hearing of the case was lawfully conducted despite the absence of the parties, since a copy of the present application, as well as of the decisions of the President of this Chamber of the Court dated 26.3.2025 and 18.12.2024 fixing the hearing date, had been duly served on them in accordance with Article 21 of Presidential Decree 18/1989 (Α΄ 8) (see service reports ΑΕΑ 276/9.4.2025 and 930/10.1.2025 of the court bailiff Konstantinos Mikras and the Chief Guard Ioannis Koktsidis, respectively, with the relevant time limit shortened to 15 days), in order for them to appear at the present hearing.

4. Whereas, the Geneva Convention relating to the Status of Refugees, which was ratified by Legislative Decree 3989/1959 (A΄ 201), provides in Article 1(A)(2), as amended by Article 1(2) of the New York Protocol of 31.1.1967, ratified by Legislative Decree 389/1968 (A΄ 125), that a "refugee" is any person who, "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country," and in Article 33 that: "No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." Furthermore, Article 78 [formerly Articles 63(1) and (2) and 64(2) of the Treaty establishing the European Community (TEC)] of Chapter 2, "Policies on border checks, asylum and immigration," of Title V, "Area of Freedom, Security and Justice," of the Treaty on the Functioning of the European Union (TFEU, see consolidated version: OJ C 202 of 7 June 2016, p. 47 et seq.) provides that: "1. The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties. 2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a Common European Asylum System, comprising: (a) a uniform status of asylum for nationals of third countries, valid throughout the Union; (b) a uniform status of subsidiary protection for nationals of third countries requiring international protection, without obtaining European asylum; (c) … (d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status; (e) …"

5. Whereas, as consistently held by the Court of Justice of the European Union (CJEU), the Geneva Convention constitutes the cornerstone of the international legal system for the protection of refugees. The provisions of the directives forming the Common European Asylum System, such as, inter alia, Directives 2011/95/EU and 2013/32/EU concerning the conditions for granting refugee status, the content of that status, and the procedures to be followed (see below for these directives), were adopted in order to assist the competent authorities of the Member States in applying that Convention, on the basis of common concepts and common criteria. Accordingly, the provisions of those directives must be interpreted in a complementary manner, in light of their overall scheme and purpose, in accordance with the Geneva Convention and other relevant international instruments, as referred to in Article 78(1) TFEU. In that interpretation, due regard must also be had to the fundamental rights recognised by the Charter of Fundamental Rights of the European Union (see, to that effect, CJEU judgments of 8.5.2014, Joined Cases C-199/12 to C-201/12, *X and Others*, paras 39 and 40, and of 26.2.2015, Case C-472/13, *Shepherd*, paras 22 and 23). Member States are required not only to interpret their national law in a manner consistent with EU law, but also to ensure that they do not rely on an interpretation that is contrary to the fundamental rights protected by the EU legal order or to the other general principles of EU law (see CJEU judgment of 21.12.2011, Joined Cases C-411/10 and C-493/10, *N.S. and Others*, para 77).

6. Whereas, on the basis of Article 78(2)(d) TFEU, Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 "on common procedures for granting and withdrawing international protection (recast)" (OJ L 180) was adopted. This Directive introduced, compared to the previously applicable Directive 2005/85/EC (OJ L 326), additional requirements concerning the procedures for granting and withdrawing international protection within the meaning of Directive 2011/95/EU, with a view to establishing a common asylum procedure in the European Union. Its purpose is to reduce secondary movements of applicants for international protection between Member States where such movements are due to differences in legal frameworks, and to create equivalent conditions for the application of Directive 2011/95/EU across Member States. These requirements concern, in particular, the adoption of decisions by authorities whose staff possess the necessary knowledge or training in the field of international protection, in an objective and impartial

manner; the effective access to procedures; adequate procedural guarantees, including the possibility of a personal interview; the possibility of communication with a representative of the United Nations High Commissioner for Refugees (UNHCR) and with organisations providing information or advice to applicants for international protection; the possibility of communicating in a language that the applicant understands; and, in the event of a negative decision, the right to an effective remedy before a court or tribunal (see, in particular, Articles 10–12, 14–17, and 29 of the Directive). Among these requirements is also, under certain conditions, the provision, within the framework of appeal procedures, of free legal assistance and representation to applicants by persons who, under national law, have the necessary qualifications. Recitals 23 and 60 of the Directive state as follows: "(23) In appeal procedures, applicants should, under certain conditions, be granted free legal assistance and representation by persons competent under national law. Moreover, at all stages of the procedure, applicants should have the right to consult, at their own cost, legal advisers or other counsellors admitted or permitted as such under national law. (60) This Directive respects fundamental rights and observes the principles recognised in the Charter. In particular, this Directive seeks to ensure full respect for human dignity and to promote the application of Articles 1, 4, 18, 19, 21, 23, 24 and 47 of the Charter and should be implemented accordingly."

7. Whereas, more specifically, Directive 2013/32/EU provides in Article 20, entitled "Free legal assistance and representation in appeal procedures," that: "Member States shall ensure that, upon request, free legal assistance and representation are granted in the appeal procedures provided for in Chapter V. This shall include, at least, the preparation of the necessary procedural documents and representation on behalf of the applicant in a hearing before a court or tribunal of first instance. 2. … 3. Member States may provide that free legal assistance and representation are not granted where a court or other competent authority considers that the applicant's appeal has no tangible prospect of success…. In applying this paragraph, Member States shall ensure that legal assistance and representation are not arbitrarily restricted and that the applicant's effective access to justice is not hindered. 4. Free legal assistance and representation shall be subject to the conditions set out in Article 21." Article 21, entitled "Conditions for the provision of free legal and procedural information and free legal assistance and representation," provides that: "1. … Free legal assistance and representation referred to in Article 20 shall be provided by persons admitted or recognised as such under national law. 2. Member States may provide that … the free legal assistance and representation referred to in Article 20 shall be granted: (a) only to those who lack sufficient resources and/or (b) only through services provided by legal advisers or other counsellors specifically designated by national law to assist and represent applicants. Member States may provide that the free legal assistance and representation referred to in Article 20 shall be granted only for appeal procedures in accordance with Chapter V before a court or tribunal of first instance and not for further appeals or reviews provided for under national law, including rehearings or reviews of appeals. … 3. Member States may lay down rules concerning the submission and processing of applications for free legal assistance and representation under Article 20. 4. … 5. …" Article 23, entitled "Scope of legal assistance and representation," provides that: "1. Member States shall ensure that the legal adviser or other counsellor admitted or recognised as such under national law who assists or represents an applicant in accordance with national law has access to the information in the applicant's file on the basis of which a decision is or will be taken." Article 46, entitled "Right to an effective remedy," provides that: "1. Member States shall ensure that applicants have the right to an effective remedy before a court or tribunal against the following decisions: (a) a decision taken on an application for international protection, including decisions: (i) considering an application to be unfounded with regard to refugee status and/or subsidiary protection status, (ii) … (iii) …, (iv) … (b) … (c) … 2. … 3. In order to comply with paragraph 1, Member States shall ensure that the effective remedy provides for a full and ex nunc examination of both facts and points of law, including, where applicable, an examination of the need for international protection in accordance with Directive 2011/95/EU, at least in appeal procedures before a court or tribunal of first instance. 4. Member States shall lay down reasonable time limits and other necessary rules for the applicant to exercise the right to an effective remedy pursuant to paragraph 1. The time limits shall not render such exercise impossible or excessively difficult. … 5. … 6. … 7. … 8. … 9. … 10. … 11. …".

8. Whereas, the aforementioned Directive 2013/32/EU was transposed into the domestic legal order by Law 4375/2016, entitled "Organisation and operation of the Asylum Service, the Appeals Authority, …, adaptation of Greek legislation to the provisions of Directive 2013/32/EU of the European Parliament and of the Council…" (A΄ 51/3.4.2016, corrigendum A΄ 57/6.4.2016), which remained in force until 31.12.2019, as the provisions of the said Directive were subsequently re-incorporated into national law by Articles 62 et seq. of Law 4636/2019 (A΄ 169), and from 1.1.2020 Articles 33 to 66 of Law 4375/2016 were repealed, pursuant to Article 119(1) of Law 4636/2019. Furthermore, under Article 92 (Article 46 of Directive 2013/32/EU), entitled "Right to appeal," of the aforementioned Law 4636/2019, as in force at the time of lodging the administrative appeal and issuing the contested decision, it is provided that: "1. The applicant shall have the right to lodge the appeal provided for in paragraph 5 of Article 7 of Law 4375/2016 before the Appeals Authority referred to in Article 4 of Law 4375/2016: (a) against a decision rejecting an application for international protection as unfounded under the regular procedure, as well as against a decision granting subsidiary protection status, in so far as it concerns the non-recognition of the applicant as a refugee, within thirty (30) days from the notification of the decision or from the time it is presumed that the appellant became aware thereof, in accordance with paragraph 5 of Article 82 (as paragraph 1 was replaced by Article 20(1) of Law 4686/2020); (b) …". Moreover, Article 88 (Article 32 of Directive 2013/32/EU), entitled "Unfounded applications," of the same Law 4636/2019 provides that: "1. The competent Decision Authority shall reject the application as unfounded if it establishes that the applicant does not meet the conditions to be recognised as a refugee or as a beneficiary of subsidiary protection under the applicable provisions. 2. …". Article 94 of that law, entitled "Lodging of appeals," provides that: "1. The appeal shall be lodged with the Regional Asylum Office or the Autonomous Unit of the Asylum Service that issued the contested decision and shall be signed, on pain of inadmissibility, by the appellant himself or by a duly authorised lawyer… 2. … 3. Upon lodging, a record shall be drawn up indicating the date of submission, …". Article 95 provides that: "1. Upon lodging the appeal, the competent Receiving Authority shall inform the appellant on the same day of the date of its hearing. 2. … 3. … 4. … 8. Appeals submitted after the expiry of the time limits set out in paragraph 1 of Article 92 of this law shall be examined as a matter of priority by decision of the Director of the Appeals Authority no later than ten (10) days from the lodging of the appeal. If the appellant proves by documentary evidence that the late submission is due to force majeure, the appeal shall be examined on its merits; otherwise, it shall be rejected as inadmissible. …". Article 97 provides that: "1. The procedure before the Independent Appeals Committees shall, as a rule, be conducted in writing, and the examination of appeals shall be carried out on the basis of the case file. 2. During the proceedings before the Independent Appeals Committees, the appellant shall be required to appear either in person or through a duly authorised lawyer, subject to paragraph 3 of Article 78. …". Article 98(3) provides that: "3. The failure to provide free legal assistance, under the conditions of Article 71, shall constitute grounds for adjournment only if the Committee considers, by a specifically reasoned decision, that irreparable harm would be caused to the appellant and that there is a likelihood of success of the appeal (as this paragraph was added by Article 24(2) of Law 4686/2020, A΄ 96/12.5.2020)." Finally, Article 99, entitled "Submissions," provides that: "The appellant may submit written pleadings to develop the arguments raised in the appeal no later than three (3) days before the hearing of the appeal. … Within the same time limit, the appellant shall also submit the evidence supporting his claims. …".

9. Whereas, furthermore, Article 71 (Articles 19 to 23 of Directive 2013/32/EU) of Law 4636/2019, as in force at the relevant time in the present case—prior to its repeal by Article 148 of Law 4939/2022 (A΄ 111)—entitled "Provision of information – Legal representation and assistance," provides that: "1. … 2. Applicants shall be provided, within the framework of the procedures of Chapter C, with free legal information and information on the procedure relating to their case. In addition to the provision of information referred to in the previous subparagraph, in the event of a decision refusing refugee status at first instance, applicants shall be provided, upon request, with specialised information regarding the reasoning of the decision and the possibility of lodging an appeal against it. The provision of information referred to in the preceding subparagraphs may be carried out by certified organisations. 3. Applicants shall be granted, upon their request, free legal assistance in proceedings

before the Appeals Authority under the terms and conditions set out in the Ministerial Decision provided for in paragraph 8 of Article 7 of Law 4375/2016. … 4. … 5. … 6. … 7. …". Pursuant to paragraph 8 of Article 7 of Law 4375/2016, Joint Ministerial Decision No. 3449/2021 (B΄ 1482/13.4.2021), applicable at the relevant time, entitled "Provision of legal assistance to applicants for international protection," was adopted. Article 1 thereof provided that: "1. Applicants for international protection shall be provided with free legal assistance for the purpose of lodging the appeal provided for in paragraph 5 of Article 7 of Law 4375/2016 before the Appeals Authority referred to in Article 4 of the same law, in accordance with the specific terms and conditions of this decision. 2. The right to free legal assistance is granted to applicants for international protection during the second-instance examination procedure, as regulated by the provisions of Chapter VII of Part Three (Articles 92 to 105) of Law 4636/2019. Free legal assistance shall be provided by a lawyer included in the Registry of Lawyers of the Asylum Service, … 4. … The applicant shall be informed as soon as possible and in a language they understand by the competent Regional Asylum Office of the lawyer appointed to provide them with free legal assistance… 5. Legal assistance shall include: (a) the drafting and submission of the appeal, … (b) the holding of meetings with the applicant for the proper preparation of their case, and (c) the drafting and submission of written pleadings and any other required document or evidence. 6. During the meetings referred to in point (b) of the previous paragraph, interpretation services shall be provided free of charge, at the expense of the Asylum Service, where communication between the lawyer and the applicant cannot otherwise be ensured. …". Article 2 thereof, entitled "Registry of Lawyers," provided that: "1. A Registry of Lawyers shall be maintained within the Asylum Service, consisting of practising lawyers who may be registered therein provided that they meet the conditions set out in the following paragraphs. In particular, lawyers must: (a) have a very good knowledge of the English language, and (b) not have been subject to disciplinary sanctions. 2. … 3. … 4. … 5. … 6. … 7. … 8. … 9. Each lawyer registered in the Registry must have completed a specialised training seminar in international protection law, organised by the Asylum Service of the Ministry of Migration and Asylum in cooperation with other bodies. 10. … 11. …". Finally, Article 5 thereof, entitled "Obligations of lawyers," provided that: "1. … 2. Lawyers are required to participate, without additional remuneration, in training programmes organised by the Asylum Service in cooperation with other bodies (European Asylum Support Office, etc.), with the aim of their continuous training and updating on matters of international protection law. 3. A lawyer registered in the Registry is obliged to undertake and handle each assigned case with due diligence. If a lawyer registered in the Registry fails to act with due diligence in assigned cases or refuses or is unable to act for reasons not constituting force majeure, or fails to comply with the obligations of this Article, they shall be removed from the Registry by decision of the Director of the Asylum Service and the cases shall be assigned to other lawyers … 4. Lawyers shall remain registered in the Registry until their removal in accordance with the terms of this Article … 5. By decision of the Director of the Asylum Service, following a request by the lawyer, the provision of their services may be suspended for a period not exceeding three (3) months where objective reasons exist due to which the lawyer is unable to provide their services. …".

10. Whereas, as has been held (see Council of State, Plenary, 1150/2025, 1347/2017), the Independent Appeals Committees, established pursuant to Article 4(1) of Law 4375/2016, as replaced by Article 86(1) of Law 4399/2016, were created in order to ensure the right to an effective remedy before a court, as enshrined in Article 46 of the Directive, that is, the right to effective judicial protection under Article 47 of the Charter of Fundamental Rights of the European Union, the first paragraph of which corresponds to Article 13 of the ECHR (see also the explanatory memorandum to the law; cf. CJEU judgment of 18.12.2014, C-293/14, *Tall*, para. 52). In particular, in order to ensure the required procedural guarantees, it was provided that the Appeals Committees, which are competent to examine administrative appeals lodged by applicants for international protection—so as to review, both in law and in substance, first-instance rejection decisions—and which are described in the explanatory memorandum to Article 86 of Law 4399/2016 as "quasi-judicial bodies," are composed, for a three-year term, by a majority of serving judicial officers (judges of the ordinary administrative courts). The members of these committees, as expressly provided in Article 5(3)(f) of the law, enjoy personal and functional independence in the performance of their duties. Furthermore, compliance with the principle of

impartiality is ensured, given that the committees have the status of a third party vis-à-vis the parties involved and do not represent the administration. It is expressly provided that the competent Minister may only bring an application for annulment against the acts of those committees (see Article 64(2) of the law). The status of a third party is not negated, nor is the principle of impartiality infringed, by the fact that judges participating in the composition of the committees may subsequently sit on the benches of administrative courts called upon to adjudicate cases brought by other parties seeking the annulment of other acts of those committees. The decisions of the committees, issued on appeals against first-instance decisions rejecting applications for international protection, following a thorough examination both in law and in substance and supported by full, specific and detailed reasoning, are binding on the parties, as they may be set aside only by means of a legal remedy. Moreover, the procedure before them meets the necessary guarantees—particularly the right to be heard and, more generally, the rights of the defence—ensuring the right to an effective remedy, taking into account the particular features of the procedure, which require, in principle, confidentiality and thus justify certain limitations on the publicity of proceedings. In view of the above, the said Independent Appeals Committees do not constitute courts within the meaning of the Constitution; however, they are bodies exercising jurisdictional functions within the meaning of Article 89(2) of the Constitution and are staffed by serving judicial officers who exercise their functions therein not in their capacity as judges, but as public officials—members of independent authorities within the executive branch (see Council of State 1150/2025, 2347, 2348/2017, 1580, 1581/2021 Plenary; Council of State 1371/2023). The jurisdictional nature of their functions is not negated by the fact that: (a) their acts are issued in the context of administrative appeals; (b) their acts are subject to annulment proceedings before the competent administrative courts, whose decisions entail, under the Constitution and the law, an obligation of compliance; (c) their decisions are not pronounced in a public hearing but are simply notified to applicants for international protection; (d) the judicial members of the committees may be replaced, following their request, in accordance with the same procedure; (e) the Administrative Director of the Appeals Authority exercises certain powers to ensure their proper functioning, without, however, exercising hierarchical control over the Independent Appeals Committees or any direct or indirect influence over the exercise of their functions; (f) the Minister may, in the exercise of the regulatory organisational competence conferred by law, increase or decrease the number of committees; and (g) the procedure before the committees is, as a rule, written and does not provide for a right to an oral hearing of applicants before them, except under the conditions laid down by law, as previously stated (cf., in relation to a preliminary question on the meaning of the corresponding Article 39 of Directive 2005/85/EC, CJEU judgment of 31.1.2013, C-175/11, *D. and A.*, paras. 83 et seq. and 102). Under these circumstances, as has already been held (see CJEU judgment of 3 July 2025, C-610/23, *Al Nasiria*), the Independent Appeals Committees satisfy the necessary conditions to be regarded as "courts or tribunals" within the meaning of Article 46 of Directive 2013/32.

11. Whereas, the characteristics of the appeal provided for in Article 46(4) of Directive 2013/32 must be determined in accordance with Article 47 of the Charter, according to which everyone whose rights and freedoms guaranteed by EU law are violated has the right to an effective remedy before a tribunal, subject to the conditions laid down in that Article [judgment of 9 September 2020, *Commissaire général aux réfugiés et aux apatrides* (Rejection of a subsequent application – Time limit for bringing an action), C-651/19, EU:C:2020:681, para. 27]. Accordingly, Article 46(4) of the Directive precludes any national measure that hinders the effective exercise of the remedies provided for in paragraph 1 of that Article [see, by analogy, judgment of 22 June 2023, *K.B. and F.S.* (Ex officio examination in criminal matters), C-660/21, EU:C:2023:498, para. 37]. Therefore, where Member States set time limits for bringing an appeal under a provision of EU law such as Article 46(4) of Directive 2013/32, they are required, under Article 51(1) of the Charter, to ensure compliance with the right to an effective remedy before a tribunal, as guaranteed by Article 47 of the Charter and given specific expression in Article 46 of the Directive [cf. judgments of 19 December 2019, *Deutsche Umwelthilfe*, C-752/18, EU:C:2019:1114, para. 34, and of 22 June 2023, *K.B. and F.S.* (Ex officio examination in criminal matters), C-660/21, EU:C:2023:498, para. 40]. As follows from recital 20 of Directive 2013/32, such time limits must, in any event, remain reasonable and must not hinder a sufficient and

full examination of the application, nor the effective exercise, by the applicant, of the rights conferred on them by the Directive. Furthermore, as clarified in recital 25 of the Directive, every applicant must have effective access to the procedures, be able to cooperate and communicate appropriately with the competent authorities in order to present the elements of their case, and enjoy sufficient procedural guarantees to enable them to pursue their case at all stages of the procedure. In order for applicants to be able to exercise their right to an effective remedy before a tribunal, Article 22 of Directive 2013/32, read in the light of recital 23 thereof, guarantees applicants, at all stages of the procedure, the right to legal assistance and representation, which may be free of charge under Article 20 of the Directive, even after a negative decision. In addition, Article 23 of the Directive ensures that their legal advisers have access to the information contained in the file on the basis of which a decision is or will be taken [judgment of 9 September 2020, *Commissaire général aux réfugiés et aux apatrides* (Rejection of a subsequent application – Time limit for bringing an action), C-651/19, EU:C:2020:681, para. 62]. Therefore, in order to comply with the requirements arising from Article 46(4) of Directive 2013/32, read in the light of Article 47, first paragraph, of the Charter, a time limit for bringing an appeal may be regarded as effectively sufficient for the preparation and exercise of an effective remedy before a tribunal only if the applicant is in a position to effectively exercise, within such a time limit, the procedural rights referred to above (see Order of the Court (Eighth Chamber) of 27 September 2023). Failures on the part of the competent authorities responsible for examining applications for international protection, which relate to access to the procedure itself and to its proper conduct—such as, inter alia, the failure to provide legal assistance—raise issues of violation of Article 47 of the Charter of Fundamental Rights of the European Union, Article 13 of the ECHR, and, potentially, of the principle of non-refoulement, due to the risk that the applicant for international protection may be returned to a country where their life is at risk, immediately and without a serious examination of the merits of their asylum application (cf. ECtHR, judgment of 21 January 2010, *M.S.S. v. Belgium and Greece*, paras. 181, 301, 319, 322).

12. Whereas, in the present case, the following emerge from the case file: The applicant, a national, according to his statement, of Guinea, born on 15.1.2002, submitted an application for international protection on 21.6.2018 before the Regional Asylum Office of Samos. During the registration of that application, he stated that he did not wish to return to his country of origin, as his life was at risk from members of his family and the police were unable to assist him. The case was referred to the regular procedure by the referral act …/9.7.2018, as the applicant was considered vulnerable, since it was established that he belonged to one of the categories of Article 14(8) of Law 4375/2016, namely that he was an unaccompanied minor. On 20.7.2020, the scheduled personal interview of the applicant took place, with the assistance of an appropriate interpreter, in the French language, which the applicant understands and speaks. The applicant's application was rejected as unfounded by decision …/13.1.2021 of the Regional Asylum Office of Thessaloniki, on the ground that he did not meet the conditions for recognition as a refugee or as a beneficiary of subsidiary protection. That decision, together with the accompanying document …/13.1.2021, which explained in a language understood by the applicant its content, its consequences, and the actions available to him [in particular that he could lodge an appeal before the Appeals Authority within a time limit of thirty (30) days, starting from the following day], was served on the applicant by registered post of the Hellenic Post (ELTA) on 8.6.2021 (see the service report no. 73538/17.6.2021 "service by registered letter" and the ELTA receipt bearing the applicant's handwritten signature). Subsequently, on the following day (after service), by his application …/9.6.2021 to the Regional Asylum Office of Thessaloniki, the applicant requested the provision of free legal assistance by a lawyer registered in the Asylum Service's Registry of Lawyers for the second-instance administrative procedure. By the same application, the applicant also granted authorisation to the lawyer who would be appointed by the above service to undertake all necessary actions for his representation in the second-instance administrative procedure, including, inter alia, to draft and submit on his behalf an appeal against the first-instance rejection decision, to represent him before the competent Appeals Committee during the hearing of his appeal, to appear before the Committee, and to submit written pleadings, supplementary or additional grounds of appeal. Thereafter, by decision no. …/16.6.2021 of the Head of the Department for Monitoring European Programmes and Funding of the Asylum Service, the

applicant's case was assigned to S.M., a lawyer registered in the Asylum Service's Registry of Lawyers, and it was decided that the assignment decision, as well as the case file, would be immediately communicated to that lawyer. The latter drafted the applicant's administrative appeal against the first-instance rejection decision, which was lodged with the Regional Asylum Office of Thessaloniki on 27.8.2021 (see filing record no. …3/27.8.2021 of the Regional Asylum Office of Thessaloniki, signed by the applicant). In addition, a written submission dated 8.9.2021, signed by the same lawyer, was filed before the Appeals Authority. In that submission, she stated that she had become aware of the email assigning her the case on 27.6.2021 and that she had sent the appeal on 30.6.2021, under protocol number …/30.6.2021; however, no evidence in the case file confirms that the appeal was sent to the authority on that date. Subsequently, by the contested decision …/20.9.2021 of the 3rd Independent Appeals Committee, the applicant's appeal was rejected as inadmissible on the ground that it had been lodged on 27.8.2021 and therefore after the expiry of the thirty (30)-day time limit provided for in Article 92(1) (8.7.2021), which had started running from the service of the first-instance rejection decision on the applicant.

13. Whereas, with the present application, the applicant submits that the contested decision is unlawful, as it was adopted in breach of the right to an effective remedy (Articles 13 of the ECHR and 47 of the Charter of Fundamental Rights of the European Union), on the ground that he was deprived of effective free legal assistance, which, as alleged, causally led to the rejection of his appeal as inadmissible. More specifically, he argues that, due to the inadequate representation provided by the lawyer appointed to his case by the Asylum Service, his application for international protection was ultimately rejected as inadmissible, without being examined on its merits and without being afforded the opportunity to exercise his procedural and substantive rights during the examination of his case before the Appeals Committee. In particular, the applicant contends that he timely and repeatedly requested from the Asylum Service to be informed of the details of the lawyer appointed to his case, in order to communicate with her regarding the lodging of the appeal, and that, since the Service failed to respond to that request, he sent, with the assistance of an employee of the non-governmental organisation "Arsis," a relevant email, which remained unanswered until August 2021, when he was eventually summoned by the Regional Asylum Office of Thessaloniki to sign the appeal that had been drafted and sent to the Service by the aforementioned lawyer. In support of his claims, the applicant relies on and submits before the Court, inter alia: (1) a printout of the email dated 8.7.2021 sent by the legal advisor of "Arsis" to the Asylum Service of the Regional Asylum Office of Thessaloniki, entitled "M.B. Legal Aid. Urgent," which states: "the applicant… requested by email to be informed about the progress of the case, since from the day he signed he has not received any notification or information and does not know what needs to be done in order not to lose his right to lodge an appeal. We therefore kindly request immediate information, either directly to him or to me as the authorised representative who assisted him during the first-instance asylum procedure… Please respond given the urgent nature of the matter"; and (2) a printout of the email dated 8.9.2021 sent by lawyer S.M. to the 3rd Appeals Committee, in which she states: "I attach the written submission in case … with the request that the late submission of the appeal be remedied for the reasons mentioned," as well as the aforementioned written submission (dated 8.9.2021), in which that lawyer asserted that the email assigning her the case had been sent on 19.6.2021 but, due to her hospitalisation as a result of COVID-19, she became aware of it only on 27.6.2021; that she then attempted to contact the Asylum Service without success; and that she ultimately sent the applicant's appeal on 30.6.2021 (under protocol no. …/30.6.2021). Furthermore, she states that the applicant "was never informed of the need to sign the appeal, was never called to sign it, and appeared out of time without fault on his part. I kindly request that the late submission be excused due to his lack of fault, as well as due to the failure to inform him and to upload the proof of service, and due to the illness of the legal representative until 30/7, when the appeal was lodged, without access to email."

14. Whereas, as already set out above, Article 92 (Article 46 of Directive 2013/32/EU), entitled "Right to appeal," of Law 4636/2019, as in force at the relevant time, provides in paragraph 1 that: "The applicant shall have the right to lodge the appeal provided for in paragraph 5 of Article 7 of Law 4375/2016 before the Appeals

Authority…: (a) against a decision rejecting an application for international protection as unfounded under the regular procedure, …, within thirty (30) days from the notification of the decision or from the time it is presumed that the appellant became aware thereof, in accordance with paragraph 5 of Article 82 (as paragraph 1 was replaced by Article 20(1) of Law 4686/2020); (b) …". Furthermore, Article 95(8) of that law provides that: "Appeals submitted after the expiry of the time limits set out in paragraph 1 of Article 92 of this law shall be examined as a matter of priority by decision of the Director of the Appeals Authority… If the appellant proves by documentary evidence that the late submission is due to force majeure, the appeals shall be examined on their merits; otherwise, they shall be rejected as inadmissible. …".

15. Whereas, as consistently held in the case-law of the Greek courts, according to a general principle of law, time limits laid down by law are suspended in cases of force majeure. Force majeure is understood as any unforeseeable event which, in the specific circumstances, could not have been prevented even by the exercise of utmost diligence and prudence, and as a result of which the lodging, either in person or through a legal representative, of the relevant judicial or administrative remedy within the prescribed time limit was absolutely prevented (see Council of State 1734/2023, 1814/2020; cf. Council of State 1037/2021, 2447/2017, 1452/2015, 239/2003, 2192/2002, 1135/2000). Furthermore, as has been held, force majeure, within the meaning described above, may also consist in the illness of the person concerned, provided that such person was, due to that illness, in a state of absolute inability both to lodge the relevant judicial or administrative remedy within the prescribed time limit and to notify their authorised lawyer in due time in order for the latter to take the necessary steps (Council of State 1734/2023, 1814/2020; cf. Council of State 1028/2019, 1272/2018, 2447/2017, 240/2016, inter alia). The suspension lasts for as long as the event constituting force majeure persists; after its cessation, the person concerned is required to lodge the relevant judicial or administrative remedy without delay (Council of State 1814/2020; cf. Council of State 1028/2019, 414/1992, 1366/1989).

16. Whereas, as consistently held, the characteristics of the appeal provided for in Article 46 of Directive 2013/32 must be determined in accordance with Article 47 of the Charter, under which everyone whose rights and freedoms guaranteed by EU law are violated has the right to an effective remedy before a tribunal, subject to the conditions laid down in that Article (CJEU judgment of 18 October 2018, *E.G.*, C-662/17, para. 47 and the case-law cited therein). Furthermore, in the absence of relevant EU rules, it is for the domestic legal order of each Member State to lay down the procedural rules governing actions for safeguarding rights which individuals derive from EU law, in accordance with the principle of procedural autonomy, provided, however, that those rules are not less favourable than those governing similar domestic situations (principle of equivalence) and do not render practically impossible or excessively difficult the exercise of rights conferred by EU law (principle of effectiveness) [see, inter alia, ECJ judgment of 29 April 2004, Joined Cases C-482/01 and C-493/01, *Orfanopoulos and Oliveri*, para. 80, and judgment of 9 December 2003, C-129/00, *Commission v Italy*, para. 25; also CJEU Grand Chamber judgment of 5 October 2010, C-173/09, *Elchinov*, para. 31; judgment of 19 March 2020, *LH (Tompa)*, C-564/18, para. 63; and judgment of 9 September 2020, *JP*, C-651/19, para. 34].

17. Whereas Directive 2013/32 provides in Article 20 that Member States are required to ensure that, upon request, free legal assistance and representation are granted in the context of the appeal procedures referred to in Article 46(2), while leaving them discretion to set reasonable time limits and to establish the other necessary rules for the exercise of the right to an effective remedy, provided that such time limits do not render the exercise of that right impossible or excessively difficult. Furthermore, Article 71 of Law 4636/2019, in compliance with Articles 19 to 23 of the Directive, specifies in paragraph 3 that free legal assistance in proceedings before the Appeals Authority is provided to applicants for international protection under the terms and conditions laid down in the ministerial decision issued pursuant to paragraph 8 of Article 7 of Law 4375/2016. The Joint Ministerial Decision 3449/2021, adopted on the basis of that provision and applicable at the material time, further provides, in particular, for the assignment of such assistance to lawyers included in the Asylum Service Lawyers' Registry, the prompt information of the applicant regarding the lawyer appointed to

handle their case, the holding of meetings between the applicant and the appointed lawyer for the preparation of the case, with the provision of interpretation services where necessary, and, finally, the drafting and submission of the appeal. Moreover, it provides for the training of the lawyers included in the Registry, as well as their removal in cases where they fail to fulfil the duties assigned to them following the acceptance of a legal aid case. More specifically, it is stipulated that Registry lawyers receive specialised training through seminars, are required to undertake and diligently handle the cases assigned to them, and, failing this, or in cases where a lawyer refuses or is unable to act for reasons not constituting force majeure, they are to be removed from the Registry.

18. Whereas, in light of the foregoing (see in particular paragraphs 14 to 17 of the present judgment), it must be examined whether it is compatible with Article 46 of Directive 2013/32/EU and Article 47 of the Charter of Fundamental Rights of the European Union to dismiss, pursuant to Articles 92(1)(a) and 95(8) of Law 4636/2019, an administrative appeal against a first-instance decision rejecting an application for international protection as inadmissible on the ground that it was lodged out of time, in a situation where the requirements laid down in Article 71 (Articles 19 to 23 of the Directive) of Law 4636/2019 and in the ministerial decision adopted pursuant thereto have not been complied with, namely the obligation to inform the appellant of the lawyer appointed to their case, to ensure communication between the appellant and the appointed lawyer, and where the latter has not handled the case with the diligence required under Article 5 of Joint Ministerial Decision 3449/2021. More specifically, this concerns a situation in which, although the appellant requested, within the statutory time limit for lodging the appeal, the appointment of a lawyer by the Asylum Service to assist them and demonstrated due diligence in following up their case, the lawyer appointed by the Service failed to communicate with the applicant for international protection and to submit the administrative appeal within the prescribed time limit, without there being any proven ground of force majeure affecting the lawyer. In that regard, it may be argued that, given the importance of the appeal under Article 46 of Directive 2013/32, and in view of the fundamental rights at stake (namely the risk that the applicant for international protection may be returned to a country where their life is in danger, immediately and without a substantive examination of their appeal against the first-instance rejection of their asylum application), the right to an effective remedy includes the obligation to examine on the merits an appeal lodged by an appellant who has shown the expected interest and due diligence in pursuing it, without that person having to bear the consequences of any failure by the lawyer appointed by the Asylum Service for that purpose (see, by analogy, ECtHR judgments of 22 March 2007, *Siałkowska v. Poland*, no. 8932/05, and of 17 July 2012, *Muscat v. Malta*, no. 24197/10). However, the opposite view may also be supported, and indeed constitutes the prevailing approach in the interpretation of national procedural rules, namely that a party bears responsibility for the errors of their lawyer and must bear the consequences thereof, even where that lawyer has been appointed under a legal aid scheme and was not chosen by the party. This is based on the established case-law of the Greek courts (see paragraph 15 above), according to which statutory time limits for lodging judicial or administrative remedies are suspended only in cases of force majeure, defined as an unforeseeable event that could not have been prevented even with the exercise of the utmost diligence and prudence and which completely prevented the timely lodging of the relevant remedy; such force majeure does not include the loss of a time limit due to negligence or ignorance on the part of the lawyer handling the case. In light of the above, the interpretation of the provisions of EU law relating to the exercise of the right to an effective remedy is not so obvious as to leave no room for reasonable doubt; for that reason, the Court considers it necessary to refer a question for a preliminary ruling to the Court of Justice of the European Union.

19. Whereas, for that reason, a preliminary question must be referred to the Court of Justice of the European Union with the following wording: “Given the importance of the appeal under Article 46 of Directive 2013/32, as well as the provision under Article 20 of the Directive that, in principle, the granting of free legal assistance and representation—where an applicant for international protection submits a relevant request—is mandatory in the context of appeal proceedings, the following question is referred: Is it compatible with Article 46 of

Directive 2013/32/EU and Article 47 of the Charter of Fundamental Rights of the European Union to dismiss, pursuant to Articles 92(1)(a) and 95(8) of Law 4636/2019, an administrative appeal against a first-instance decision rejecting an application for international protection as inadmissible on the ground that it was lodged out of time, in a situation where the requirements laid down in Article 71 (Articles 19 to 23 of the Directive) of Law 4636/2019 and in the ministerial decision 3449/2021 adopted pursuant thereto have not been complied with, namely the obligation to inform the appellant of the lawyer appointed to their case, to ensure communication between the appellant and the appointed lawyer, and where the latter has not handled the case with the diligence required under Article 5 of that ministerial decision; and, more specifically, in a case where, although the appellant requested, within the statutory time limit for lodging the appeal, the appointment of a lawyer by the Asylum Service to assist them and demonstrated due diligence in monitoring their case and, in particular, in taking the necessary steps for the proper lodging of the appeal, the lawyer appointed by the Service failed to communicate with the applicant for international protection and to submit the administrative appeal within the prescribed time limit, without there being any proven ground of force majeure affecting the lawyer?"

20. Whereas, in view of the above, the final determination of the case must be adjourned until the Court of Justice of the European Union has ruled on the aforementioned preliminary question.

FOR THESE REASONS

The Court adjourns the final determination of the application.

It refers the following preliminary question to the Court of Justice of the European Union:

"Is it compatible with Article 46 of Directive 2013/32/EU and Article 47 of the Charter of Fundamental Rights of the European Union to dismiss, pursuant to Articles 92(1)(a) and 95(8) of Law 4636/2019, an administrative appeal against a first-instance decision rejecting an application for international protection as inadmissible on the ground that it was lodged out of time, in a situation where the requirements laid down in Article 71 (Articles 19 to 23 of the Directive) of Law 4636/2019 and in the ministerial decision 3449/2021 adopted pursuant thereto have not been complied with, namely the obligation to inform the appellant of the lawyer appointed to their case, to ensure communication between the appellant and the appointed lawyer, and where the latter has not handled the case with the diligence required under Article 5 of that ministerial decision; and, more specifically, in a case where, although the appellant requested, within the statutory time limit for lodging the appeal, the appointment of a lawyer by the Asylum Service to assist them and demonstrated due diligence in monitoring their case and, in particular, in taking the necessary steps for the proper lodging of the appeal, the lawyer appointed by the Service failed to communicate with the applicant for international protection and to submit the administrative appeal within the prescribed time limit, without there being any proven ground of force majeure affecting the lawyer?"

Following the response of the Court of Justice of the European Union, a new hearing date will be duly set for the final resolution of the dispute, and the parties will be summoned anew.

The Court deliberated in Thessaloniki on 16 January 2026, in the composition indicated at the beginning of the present decision, and the original is signed only by the President of the Administrative Court of First Instance, Stefanos Zoukας, due to the promotion of the reporting judge, Alexandra Tzellou, Administrative Court of First Instance Judge, to President of the Administrative Court of First Instance and her transfer to the Administrative Court of First Instance of Ioannina (Articles 191 and 194(3)(b) of the Code of Administrative Procedure).

The decision was published in the same place, in open court, at an extraordinary public hearing on 19 March 2026, in the composition indicated in the minutes, pursuant to Article 194(3) of the Code of Administrative Procedure, due to the aforementioned change in service status.

THE PRESIDENT THE REGISTRAR