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Meeting: 1265 meeting (20-22 September 2016) (DH)

Communication from a NGO (Greek Council for Refugees) (30/05/2016) in the case of M.S.S. against Greece (Application No. 30696/09).

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1265 réunion (20-22 septembre 2016) (DH)

Communication d'une ONG (Greek Council for Refugees) (30/05/2016) dans l'affaire M.S.S. contre Grèce (Requête n° 30696/09) **[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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**SUBMISSION OF THE GREEK COUNCIL FOR REFUGEES  
TO THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE  
IN THE CASE OF *M.S.S. v. BELGIUM & GREECE* (Appl. No 30696/09)  
AND RELATED CASES  
1259 meeting (7-9 June 2016) (DH)**

The Greek Council for Refugees (GCR) is a non-governmental organization, which has been active since 1989 in the field of asylum and human rights in Greece. During the previous years GCR has communicated to the Committee of Ministers of the Council of Europe a series on selected issues<sup>1</sup>, within the framework of the execution of the ECtHR judgment *MSS v. Belgium and Greece* (appl. n. 30696/09) according to art. 9 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

The present submission means to provide to the Committee a comprehensive update on the current situation of persons in need of international protection in Greece, including crucial developments that took place after the closure of the so called "Balkan route" and the EU-Turkey Agreement of the 18<sup>th</sup> of March 2016. Without underestimating the efforts made by the Greek authorities in order to tackle the current unprecedented situation in Greece, we would like to underline the following issues of concern:

## **A. Asylum Procedure**

### **1. *Third country nationals willing to apply for asylum. Limited or no access to the asylum procedure.***

As long as third country nationals entering Europe through Greece were able to cross the Balkan route to reach other European Member States, they have been avoiding lodging an asylum application in Greece due to the poor reception conditions provided and the extremely limited integration prospects of those granted with a status here. On the other hand, individuals residing in the country after the border closure (who had arrived before the 20<sup>th</sup> of March 2016 in Greece, i.e. falling out of the scope of the EU-Turkey Agreement –

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<sup>1</sup> DD(2015)606 - Communications from an NGO (Greek Council for Refugees) - 29.05.2015; DD(2015)269 - Communications from an NGO (Greek Council for Refugees) and reply from the authorities - 03.03.2015 and 09.03.2015; DD(2014)591 - Communications from an NGO (Greek Council for Refugees) and response from the authorities - 28.04.2014 and 06.05.2014; DD(2013)253 - Communications from an NGO (Greek Council for Refugees) and response from the authorities - 27.02.2013 and 06.03.2013.



see below), numbering over 50,000 people, are far more willing to get into the Greek asylum procedure. For these individuals, the majority of whom should in any case be considered as prima facie refugees, applying for asylum in Greece is the only way to be protected against arrest, detention and removal<sup>2</sup>, to be granted with international protection in Europe, to initiate relocation procedures –if eligible- or to achieve family reunification with other members of their core family already in other Member States under the Dublin III Regulation. As a consequence, there has been a drastic increase in the interest in getting into the asylum procedure by the newly arrived.

**The number of people currently willing to have access to the asylum procedure exceeds by far the capacity of the Asylum Service** to register new applications. Thus access to the Asylum Service **is not guaranteed for the vast majority of persons willing to lodge an asylum application currently living in the country**<sup>3</sup>.

GCR has received and documented within one month (i.e. from 28-03-2016 to 22-04-2016) almost 900 complaints of people appearing at our offices, who expressed the will to lodge an asylum application, but allegedly had no access to the Asylum Service and sought our assistance in order to do so<sup>4</sup>. The Asylum Service, replying to GCR's interventions on access, admitted not having the capacity to handle the current large numbers of applicants. As it is mentioned in the relevant replies<sup>5</sup>, "The Asylum Service has to deal with thousands of persons on a daily basis, which exceeds its real capacity<sup>6</sup>".

It should be noted that during 2015 access to the asylum system had already been highly problematic. As the Greek Ombudsman underlined in the 2015 Annual Report "persons

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<sup>2</sup> This is particularly the case of persons who according to the Greek law and practice were provided with a temporary document issued by the Police, granting 30 days in order to leave voluntarily the country. This practice is applied, for example -inter alia- to Afghans nationals, who are the second largest group of newly arrived in 2016 (See: Hellenic Republic, Greek Police, Third country nationals arrested in Greece/first four months of 2016, [http://www.astynomia.gr/images/stories//2016/statistics16/allodapwn/2\\_statistics\\_all\\_2016\\_sull\\_yp\\_hkoothta.png](http://www.astynomia.gr/images/stories//2016/statistics16/allodapwn/2_statistics_all_2016_sull_yp_hkoothta.png)).

<sup>3</sup> From 1.1.2016 to 31.3.2016 a total number of 5596 asylum applications were registered, see Hellenic Republic, Asylum Service, Statistical Data of the Greek Asylum Service (1.1.2016 - 31.3.2016), [http://asylo.gov.gr/en/wp-content/uploads/2016/04/Greek-Asylum-Service-statistical-data-March-2016\\_en.pdf](http://asylo.gov.gr/en/wp-content/uploads/2016/04/Greek-Asylum-Service-statistical-data-March-2016_en.pdf).

<sup>4</sup> See GCR Press Release (in Greek), *Lack of access to the asylum procedure*, 19 April 2016, available at: <http://gcr.gr/index.php/en/news/press-releases-announcements/item/554-adynamia-prosvasis-sto-asylo>

<sup>5</sup> GCR has been continuously addressing the problem of access to the asylum procedure, intervening in writing before the Asylum Service. The most recently received reply of the latter, mentioning its reduced capacity, dates from May 24<sup>th</sup>.

<sup>6</sup> Hellenic Republic, Ministry of Interiors and Administrative Reconstruction, Asylum Service, doc n. 5838/14.4.2016; the document in Greek mentions "η υπηρεσία Ασύλου καλείται καθημερινά να εξυπηρετήσει χιλιάδες ανθρώπους, πράγμα που ξεπερνά κατά πολύ τις αντικειμενικές δυνατότητες της".



interested to apply for asylum, among them a significant number of vulnerable cases -even Syrians-, queuing outside the Asylum Service premises was something usual up to the first semester of 2015 [...]. A serious obstacle regarding access to the asylum procedure was the fact that since May 2015 the appointment for registering an asylum application has been fixed only through Skype and not in person". As the Ombudsman concludes "it seems that the registration system through Skype could not respond to a large number of calls, made by those third country nationals able to use a computer [...]. The above mentioned restrictive system regarding the registration of an asylum application seems to contradict with the principle of constant and without obstacle access to the asylum system for every third country national, and could give rise to threats over fundamental rights"<sup>7</sup>.

In practice, the Skype system, established by the Greek Asylum Service, has actually shown a number of shortcomings in practice, including the fact that not all potential applicants have computer skills, not all are in possession or have access to the necessary equipment and/or access to internet, especially when residing in the new open reception sites within Greece, not all may afford the cost of being transferred several times to the offices of NGOs assisting refugees with the Skype procedure, combined to the fact that Skype lines are often occupied and not available for long per week and per language, in order to have all persons interested connected and provided with an appointment for registration.

Recently the Asylum Service announced that, in the next few weeks, a pre-registration procedure will begin for individuals residing in open accommodation facilities at the mainland, with the support of the UNCHR and EASO<sup>8</sup>. This procedure, to our knowledge, has not started yet, and thus its results cannot be assessed. However, it should be noted that:

- not all third country nationals willing to apply for asylum are residing at open accommodation facilities
- the said procedure concerns the pre-registration of the asylum claim and not the definitive and full registration and process of the applications. Pre-registration does not grant a right to work. Moreover, only after the full registration of a claim shall the relevant time limits for its examination count. Thus, if the Asylum Service remains understaffed, it will not be possible the pre-registered applications to be handle in a timely manner way and persons could remain for a crucial period of time in an uncertain status.

## **2. *Third country nationals who have already applied for asylum. Shortcomings of the asylum procedure.***

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<sup>7</sup> Greek Ombudsman, *Annual Report 2015*, <http://www.synigoros.gr/resources/docs/ee2015-04-prosfigiko.pdf>, p. 37 (in Greek).

<sup>8</sup> Asylum Service/UNCHR/EASO, Joint press release, *The registration of asylum seekers residing in open reception facilities in the mainland will begin in the next few weeks*, 14.5.2016, [http://asylo.gov.gr/en/wp-content/uploads/2016/05/JPR-pre-registration\\_en.pdf](http://asylo.gov.gr/en/wp-content/uploads/2016/05/JPR-pre-registration_en.pdf).



Two procedures for the examination of the asylum claims (and, thus, two-speed asylum seekers) are still in place: the one concerns applicants who had filed an application before the 7<sup>th</sup> June 2013 (i.e. before the Asylum Service started operating) and the other the ones who have applied after 7<sup>th</sup> June 2013 (i.e. before the Asylum Service).

As far as the procedure before the Asylum Service is concerned, *inter alia* it shall be mentioned that:

- Despite the fact that the Asylum Service has been established in 2011 (L. 3907/2011) and has started operating in June 2013, as per now, **not all the foreseen Regional Asylum Offices are in operation**. Specifically, according to L. 3907/2011, 13 Regional Offices of the Asylum Service were foreseen to operate in various locations around the country. However, at the moment, the Asylum Service remains understaffed and only 7 Regional Asylum Offices (RAOs) are operational<sup>9</sup>, with the Attica RAO, located in Athens, being the RAO receiving the vast majority of the asylum applications.
- The **quality of the first instance examination** procedure is a matter of concern. Amongst others, lack of expertise and adequate training of the caseworkers has been reported<sup>10</sup>.
- The **function of the Appeals Authority and relevant Committees has been halted** since 25 September 2015, due to the fact that the period of service of the Appeals Committees' members has come to an end and has not been renewed. Therefore, the examination of the appeals that have been lodged from 25<sup>th</sup> Sept. onwards is continuously cancelled and no second instant examination is provided. As a result, a new backlog is created and applicants remain in uncertainty for long. Under the provisions of the new Law 4375/2016<sup>11</sup>, the Appeals Committees will be reestablished, even though said reestablishment has not been finalized in practice yet. In the meantime, according to a transitional provision of said Law (article 80 par. 27), the competency of the examination of appeals submitted after the 3<sup>rd</sup> April, including those challenging inadmissibility decisions under the fast-track border procedure applied to newcomers on the islands, is temporarily transferred to the Appeal Committees (second instance administrative body) of the 'old' procedure<sup>12</sup>.

<sup>9</sup> Greek Asylum Service, *Regional Asylum Offices*, available at: [http://asylo.gov.gr/?page\\_id=83](http://asylo.gov.gr/?page_id=83)

<sup>10</sup> Asylum Information Database, *Country Report: Greece*, last update November 2015, available at: <http://www.asylumineurope.org/reports/country/greece>

<sup>11</sup> Law 4375/2016, OG A' 51, "On the organization and operation of the Asylum Service, the Appeals Authority, the Reception and Identification Service, the establishment of the General Secretariat for Reception, the transposition into Greek legislation of the provisions of Directive 2013/32/EC "on common procedures for granting and withdrawing the status of international protection (recast) (L180/29.6.2013), provisions on the employment of beneficiaries of international protection and other provisions.

<sup>12</sup> The term "Appeals Committees of the old procedure" refer to the Committees operating under PD 114/2010, competent for the examination on second instance of the asylum applications submitted before the 7<sup>th</sup> June 2013.



- **No free legal aid system** is in place in practice under the auspices of the Greek authorities within the scope of the asylum procedure, despite art. 44 par. 3 of the new Law 4375/2016, granting the right to free legal assistance at least to those whose case is pending before the Appeals Authority<sup>13</sup>. It shall be noted though that no such right is provided by the new law to those whose case is pending before the Appeals Committees of the 'old procedure', although no relevant distinction is justified by art. 20- 21 of the EU Procedures (recast) Directive 2013/32/EU. As per the first instance (i.e. the procedure before the RAOs of the Asylum Service), no access to free legal assistance is foreseen in the new Law, although indispensable for a number of reasons.

Few Greek NGOs have been providing free legal assistance to persons in need for international protection, however, taking into account the current number of persons willing to apply for asylum on the one hand and the limited capacity of NGOs on the other, the efforts of the latter in no case could they be considered as covering the needs. In any event, the provision of legal assistance by NGOs shall not be considered as a fulfillment of the aforementioned obligation of the Greek authorities under the EU Procedures Directive.

- Since September 2015 a **relocation scheme** has been put into force. The Asylum Service is the competent authority for receiving and processing the relevant applications. Issues of concern regarding relocation:

- Relocation procedures have been regulated by analogy to the Dublin III Regulation<sup>14</sup>, and a lot of issues not addressed by the Regulation remain in legislative vacuum.
- The criteria examined regarding the country allocation are not clear, thus information provided cannot be comprehensive. The relocation scheme provides a no-choice basis allocation.
- No effective remedy against decisions concerning eligibility is provided.
- Rejections from the relocation procedure based on para 7 art. 5 of Council Decision (EU) 2015/1601 (national security or public order or application of exclusion provisions) are not justified. The member-states in their rejection decisions, repeat the abovementioned clause without further explanation, rendering impossible for the applicant to be informed and appeal against these serious allegations.
- In any event, until 8-5-2016 only 1791 applicants had been accepted by other EU member states, out of 4449 relocation applications, and only 1093 had actually been transferred<sup>15</sup>, rates that are undoubtedly unsatisfactory, taking into account that according

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<sup>13</sup> According to said provision, the terms and conditions for the provision of legal aid shall be determined by a Ministerial Decision, not yet issued.

<sup>14</sup> REGULATION (EU) N° 604/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast).

<sup>15</sup> Greek Asylum Service, *Relocation Data*, [http://asylo.gov.gr/wp-content/uploads/2016/05/Relocation-procedures-up-to-8.5.16\\_gr.pdf](http://asylo.gov.gr/wp-content/uploads/2016/05/Relocation-procedures-up-to-8.5.16_gr.pdf).



to the relevant Council Decisions, 66.400 persons in total are to be relocated from Greece in two years' time, starting from September 2015<sup>16</sup>.

- What is also indicative of the above is the reluctance of some member-states to pledge places, as well as the fact that the number of places formally indicated as available are significantly lower<sup>17</sup>.

With regard to the 'old' procedure, under the PD 114/2010, amongst others, it should be noted that a **considerable number of appeals have still not been examined**, even though some of them are pending for years and certain even for almost a decade. Moreover, as mentioned above, free legal assistance is not provided by Law within the scope of the 'old' asylum procedure.

Finally, according to art. 22 Law 4375/2016, individuals who had submitted an asylum application up to five years before the publication of the law (i.e. before 3<sup>rd</sup> April 2016), will be automatically granted with a two-year residence permit for humanitarian reasons, that can be renewed, unless the applicant applies for the examination of his/her claim for international protection.

### ***3. Third Country nationals arriving in Greece after the EU-Turkey Agreement; the fast-track procedure at the hotspots facilities.***

Third Country nationals arriving in Greece after the 20<sup>th</sup> of March 2016, through the Aegean islands are subject to the EU-Turkey Agreement. They are not allowed to access the mainland. On the contrary they are obliged to remain in the islands, in order for their asylum application to be rapidly examined and in case it is considered inadmissible under the concept of "safe country of asylum/ safe third country", to be quickly readmitted to Turkey.

The implementation of the EU-Turkey Agreement has been marked with practices which are in contradiction to international, European and national human rights legal framework. Amongst others:

- During the first days of the implementation of the EU-Turkey Agreement, due to the administrative chaos prevailing at the Hotspots facilities, the detainees were deprived of

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<sup>16</sup> COUNCIL DECISION (EU) 2015/1523 of 14 September 2015, establishing provisional measures in the area of international protection for the benefit of Italy and of Greece; COUNCIL DECISION (EU) 2015/1601 of 22 September 2015, establishing provisional measures in the area of international protection for the benefit of Italy and Greece.

<sup>17</sup> UNHCR, Building on the lesson Learned to Make Relocation Schemes Work More Efficiently, January 2016, available at: [www.unhcr.org/569fad556.pdf](http://www.unhcr.org/569fad556.pdf).





their right to apply for asylum. **Cases of individuals readmitted to Turkey without being able to exercise their right to seek asylum** have been reported<sup>18</sup>.

At the moment, in case an individual detained at a Hotspot facility is willing to apply for asylum, his/her will to apply is registered by the police, yet no proper registration of the asylum claim by the competent authority (i.e. the Asylum Service) is taking place immediately. This demonstrates vividly the limited capacity of the Asylum Service to receive and process new asylum applications on the islands.

- A fast-track asylum procedure has been established by Law 4375/2016<sup>19</sup> for the applications submitted by the newly arrived detained at the Hotspots. Even though said procedure shall be implemented only after the issuance of a relative Joint Ministerial Decision, it is already applied, despite the fact that no such decision has been issued. **The fast-track procedure taking place at the borders arises crucial issues regarding the respect of fundamental rights and guarantees** provided by the EU Procedures Directive and other legal instruments. In this respect, the Head of the Asylum Service has pointed out that “insufferable pressure is being put on us to reduce our standards and minimize the guarantees of the asylum process”<sup>20</sup>. Moreover, the UN Special Rapporteur has underlined that “the fast-track procedure under derogation provisions in Law 4375/2016 does not provide adequate safeguards”<sup>21</sup>. Aspects of great concerns regarding the fast track procedure are *inter alia* that Law 4371/2016 (art. 60 par. 4) provides that in the framework of said procedure:

- Asylum applications may be registered by Police and Armed Forces’ staff.

It should be mentioned that the establishment of the Asylum Service, staffed exclusively by civil servants, without any involvement of police staff in the asylum procedure, was a commitment of the Greek authorities in the framework of the Greek Action Plan on Asylum and Migration Management, submitted to the European Commission in 2010, and one of the

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<sup>18</sup> The Guardian, «Greece may have deported asylum seekers by mistake, says UN», 5.4.2016, [http://www.theguardian.com/world/2016/apr/05/greece-deport-migrants-turkey-united-nations-european-union?CMP=Share\\_iOSApp\\_Other](http://www.theguardian.com/world/2016/apr/05/greece-deport-migrants-turkey-united-nations-european-union?CMP=Share_iOSApp_Other); Greek Council for Refugees, *Implementation of the EU-Turkey Agreement in breach of fundamental rights*, 27.4.2016, <http://www.gcr.gr/index.php/el/news/press-releases-announcements/item/557-deltio-typou-efarmogi-symfonias-ee-tourkias-kata-paravasi-themeliodon-dikaiomaton> (in Greek)

<sup>19</sup> For a Comment on Law 4375/2016, see relevant GCR Press Release dated 11<sup>th</sup> April 2016, available in: <http://gcr.gr/index.php/en/news/press-releases-announcements/item/551-oi-paratiriseis-tou-esp-epi-tou-nomou-4375-2016/551-oi-paratiriseis-tou-esp-epi-tou-nomou-4375-2016> (in Greek).

<sup>20</sup> IRIN, “Greek asylum system reaches breaking point”, 31.3.2016, <https://www.irinnews.org/news/2016/03/31/greek-asylum-system-reaches-breaking-point>

<sup>21</sup> United Nations, Human Rights, Office of the High Commissioner, *UN Special Rapporteur on the human rights of migrants concludes his follow up country visit to Greece*, 17.5.2016, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19972&LangID=E#sthash.UtAn6Vjd.dpuf>.





measures taken in order the Greek authorities to comply with the M.S.S. judgment<sup>22</sup>. Thus, said provision represents a crucial setback to the asylum procedure in Greece.

- The asylum procedure shall be concluded in a very short time period (no more than 2 weeks), fact that may result in the underestimation of the procedural and qualification guarantees provided by the International, European and National legal framework, including the right to be assisted by a lawyer. The time given to applicants in order to exercise their right to “sufficiently prepare and consult a legal or other counselor who shall assist them during the procedure” is limited to one day, while the deadline to submit an appeal against a negative decision is five days from the notification of this decision etc.. The exercise of the rights of the asylum seekers subject to said procedure is even more difficult, if the extremely limited access to legal aid is taken into consideration. In particular, a) as mentioned above, no free legal aid system is in place yet in the framework of the asylum procedure, b) free legal aid via NGOs cannot address the existing needs (e.g. in the Hotspot of Lesvos only four NGO lawyers have been providing legal aid as per 22<sup>nd</sup> May 2016, while a total of 820 asylum applications had been submitted following the EU-Turkey agreement (as per 22 May 2016)<sup>23</sup> and c) the majority of applicants cannot afford a private lawyer.
- The Asylum Service might be assisted by EASO staff during the examination of the asylum claims. However, GCR is aware of a number of cases where the interview has been conducted exclusively by EASO staff not in the country’s official language, namely in Greek, but in English, raising significant state sovereignty concerns and making the review of the procedure and the decisions based on the said examination problematic. Similarly, the minutes of the interview are also kept in English. Moreover, the relevant first instance decisions issued after the above said procedure of examination seemed to have an identical, short and unjustified reasoning, rejecting the applications as inadmissible, considering Turkey as a “safe third country”. Remarkable is the fact that no use of the “safe third country” concept has been made by the Asylum Service or the Appeals Committees in regard to Turkey until the 20<sup>th</sup> of March 2016 and it is difficult to understand how Turkey could only be considered as a “safe third country” by the Asylum Service for those having entered Greece after the 20<sup>th</sup> of March and not for those having entered before (e.g. on the 19<sup>th</sup> of March)<sup>24</sup>.
- The right of the applicant to be examined in person in second instance is restricted. An appellant has the right to ask for an in person examination, yet it is on the absolute

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<sup>22</sup> DD(2011)567, Communication from the Greek authorities, Action plan, 03.08.2011, <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1918165&SecMode=1&DocId=1768912&Usage=2>.

<sup>23</sup> Data provided to GCR by the Asylum Service, May 2016

<sup>24</sup> For concerns over Turkey as a “safe third country”, see *inter alia*: Human Rights Watch, *Is Turkey Safe for Refugees?*, 22<sup>nd</sup> March 2016, available at: <https://www.hrw.org/news/2016/03/22/turkey-safe-refugees>; Human Rights Watch, “Q&A: The EU-Turkey Deal on Migration and Refugees”, 3<sup>rd</sup> March 2016, available at: <https://www.hrw.org/news/2016/03/03/qa-eu-turkey-deal-migration-and-refugees>; Asylum Campaign Press Release, 31 March 2016 (in Greek), <http://asylum-campaign.blogspot.gr/2016/03/31032016.html>



discretion of the Appeals Committee to accept his/her request. Moreover, even when in person examination is accepted by the competent Committee, the procedure is not without shortcomings, considering that the appellants are detained in the islands and all Committees are placed in Athens. Technical reasons related to the fact that the interview is taking place in distance, combined to the inadequacy of the equipment available and to the fact that the interpreter is only present at the premises of the Committee instead of the place where the appellant is, may lead to delays, poor communication between the Committee members and the appellant and lack of privacy, hampering the quality of the procedure.

Last but not least, numerous reports and legal notes<sup>25</sup>, underline that Turkey cannot be considered as a “safe country of asylum” of a “safe third country”. Thus, any potential readmission of an asylum seeker from Greece to Turkey, due to the fact that his/her application has been considered inadmissible, without having his application examined by the Greek authorities as to the merits may lead to a violation of article 3 in combination with art. 13 of the ECHR on behalf of Greece (*‘chain refoulement’*). Second instance decisions, cancelling the decisions of the Asylum Service (namely the RAO of Lesvos) that had rejected the applications before them as inadmissible and referring the relevant files back to the latter for examination, are already issued in cases supported by GCR<sup>26</sup>.

## B. Detention

Despite the efforts made in 2015 in order to reduce the use of administrative detention, in 2016 there has been a significant increase of the number of the persons detained both in the mainland and the islands. In November 2015 504 persons were detained<sup>27</sup>, while at the beginning of March 2016 this number has arisen to 1200 third country nationals detained<sup>28</sup>,

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<sup>25</sup> See *inter alia* Council of Europe, Parliamentary Assembly, Resolution 2109 (2016), *The situation of refugees and migrants under the EU-Turkey Agreement of 18 March 2016*, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=22738&lang=en>; Greek National Commission for Human Rights, *Report on the EU-Turkey Agreement of 15 March 2016 in the light of L. 4375/2016* (26.4.2016), [http://www.nchr.gr/images/pdf/EKTHESI\\_PROSFYGIKO.pdf](http://www.nchr.gr/images/pdf/EKTHESI_PROSFYGIKO.pdf); European Council on Refugees and Exiles/Dutch Refugee Council, *Desk research on application of a safe third country and a first country of asylum concepts to Turkey*, May 2016, <http://www.ecre.org/2016/05/20/desk-research-on-the-application-of-the-safe-third-country-and-first-country-of-asylum-concepts-to-turkey/>.

<sup>26</sup> See GCR Press Release dated 22.5.2016, <http://gcr.gr/index.php/el/news/press-releases-announcements/item/560-22052016>.

<sup>27</sup> Greek Ombudsman, *Return of third country nationals – Special report 2015*, [http://www.synigoros.gr/resources/docs/epistrofes\\_en\\_2015.pdf](http://www.synigoros.gr/resources/docs/epistrofes_en_2015.pdf), p.7.

<sup>28</sup> Information published by the Greek Coordination Authority for the Management of the Refugee Crisis as of 4 March 2016, available at: <http://www.iefimerida.gr/sites/default/files/pinn1.jpg>; The number concerns persons detained in the mainland (Korinthos pre-removal detention center, Petrou Ralli Special holding facility, Paranesti pre-removal detention center, Xanthi pre-removal detention center, Orestiada pre-removal detention center, Amigdaleza pre-removal detention center) and on the Islands (Lesvos, Chios, Samos).



let alone persons detained at police stations across the country the exact number of whom is not known. After the launch of the implementation of the EU – Turkey Agreement, all newly arrived persons are subject to automatic detention, therefore the number of persons detained on the islands has been significantly increased. According to the statistics, on the 18<sup>th</sup> of May 2016, 8549 persons were remaining on the East Aegean Islands<sup>29</sup>.

### 1. ***Detention in the mainland***

Detention conditions in the mainland remain substandard and in violation of international and national legal framework, as inadequate facilities are still in use. In particular:

- during the last months, there has been a significant increase of migrants that are being **detained for long periods of time in police station holding cells**, despite the constant commitment of the Greek authorities that police stations holding cells will not be used for prolonged detention. GCR has provided legal assistance to detainees at the Police Stations of Kolonos and Kypseli, which are located in Athens, as well as of Drapetsona, which is located in Piraeus. Some detainees were held there for a period of up to three months under substandard conditions (poor sanitary conditions, no outdoor spaces, no natural light, no provision of clothing or sanitary products, insufficient food, lack of medical services, no interpretation services etc.). According to the case law of the Court, detaining persons for prolonged periods in police stations is *per se* a violation of art. 3 ECHR<sup>30</sup>.
- In the area of Thessaloniki, the Greek Ombudsman has reported substandard conditions to various detention places in the area of Thessaloniki (“Metagogon” Department of the Police, Liti and Kordelio detention centers)<sup>31</sup>.
- In Athens, inadequate detention facilities are still in use. This is for example the case of the “Petrou Ralli” special holding facility, for which the CPT has constantly underlined that “the conditions of detention remained totally inadequate for holding irregular migrants for prolonged periods”<sup>32</sup>.
- This is also the case of pre-removal detention facilities<sup>33</sup>, where CPT has underlined that “the concept for the operation of pre-departure centres still remains based on a security approach with detainees treated in many respects as criminal suspects. In this respect, the recommendations put forward in the 2013 report have not been implemented.

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<sup>29</sup> Information published by the Greek Coordination Authority for the Management of the Refugee Crisis as of 18 May 2016, available at:

[http://www.amna.gr/pressReleaseView.php?id=109450&doc\\_id=16618585](http://www.amna.gr/pressReleaseView.php?id=109450&doc_id=16618585).

<sup>30</sup> ECtHR, *Ahmade v. Greece*, application n. 50520/09, 25.9.2012, par. 101.

<sup>31</sup> Greek Ombudsman, *Field Visits to detention Places under the competence of the Greek Police*, 201835/2175/2016, 20/01/2016.

<sup>32</sup> Council of Europe: Committee for the Prevention of Torture, *Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 14 to 23 April 2015*, 1 March 2016, CPT/Inf (2016) 4, <http://www.refworld.org/docid/56e01e594.html>, par. 114.

<sup>33</sup> Amydgaleza, Korinthos, Parenesti Dramas, Xanthi and Orestiada pre-removal detention facilities.



The centres are not staffed by properly trained officers, present within the accommodation areas, interacting with detained irregular migrants and taking a proactive role to resolve potential problems. Further, no activities are offered and material conditions are generally poor. In addition, the lack of any healthcare staff represents a public health risk in addition to jeopardizing the health of individual detained persons<sup>34</sup>.

- In May 2016, the UN Special Rapporteur visited the hotspots facilities in Samos and Lesbos, the Polykastro police station and the Elliniko detention centre for women at the mainland. According to the Rapporteur “[he is] deeply concerned about the inadequate detention conditions everywhere<sup>35</sup>”.

With regard to the lawfulness of detention, amongst others, it should be mentioned that alternatives to detention are not examined or applied<sup>36</sup>, no individual assessment is conducted before ordering detention and individuals belonging to vulnerable groups, including unaccompanied minors (UAM), victims of torture, victims of rape/ violence and mentally ill persons, are detained as well. A number of individuals find themselves detained, due to the fact that they could not have access to the asylum procedure and their temporary documentation expires. GCR has provided legal assistance to people having attempted repeatedly to apply for asylum, but whose efforts have been unsuccessful, due to the lack of capacity of the Asylum Service to register their claim. As a consequence, after the expiration of the temporary documents provided by the police<sup>37</sup>, many of them have been arrested and detained. In some cases, the said persons were arrested despite the fact that were residing in open accommodation centers around Athens with their families or they were facing serious health problems<sup>38</sup>.

## 2. ***Detention on the islands (hotspot facilities)***

As mentioned above individuals arriving in Greece after the 20<sup>th</sup> of March 2016 are subject to the EU-Turkey Agreement. Amongst others, the Agreement led to the adoption of a practice of mandatory detention.

In particular, since the launch of the implementation of the EU-Turkey Agreement, the Hotspot facilities on the islands were turned into detention centers and *all* individuals arriving after the 20<sup>th</sup> of March 2016 have been **automatically *de facto* detained**, without

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<sup>34</sup> Council of Europe: Committee for the Prevention of Torture, *Report to the Greek Government*, *idem*, par. 113.

<sup>35</sup> United Nations, Human Rights, Office of the High Commissioner, *UN Special Rapporteur on the human rights of migrants concludes his follow up country visit to Greece*, 17.5.2016, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19972&LangID=E#sthash.UtAn6Vjd.dpuf>.

<sup>36</sup> Greek Council for Refugees, *The implementation of Alternatives to Detention in Greece*, December 2015, available at: <http://goo.gl/V3azfm>, (in Greek).

<sup>37</sup> Usually, a police note granting them a 30 days period for voluntary return.

<sup>38</sup> Greek Forum of Refugees, Press Release dated 28<sup>th</sup> April 2016, <http://goo.gl/TeOI77>.



any communication of detention order or any information on the grounds of their detention. The practice of mandatory detention has been applied indiscriminately even to individuals belonging to vulnerable groups, i.e. UAMs, families with infants, persons with disabilities etc. This practice is clearly not in line with the relevant legal standards.<sup>39</sup>

Currently, despite the small numbers of arrivals, a population of over 8000 persons remains on the islands, as mentioned above. This comes as a result of the very slow asylum procedures. Therefore, as the capacity of the Hotspot facilities on the islands has been exceeded, currently a number of them is trapped on the islands, with a restriction of movement (an obligation to reside on the island), under a legal status often difficult to clarify. The provision of reception conditions to these persons is a matter of concern.

In any event, it should be mentioned that the practice of mandatory detention is foreseen by the relevant legal provisions regarding the Reception and Identification Procedure. According to art. 14 L. 4375/2016 all newly arrived individuals should remain in the relevant facilities under a 'restriction of liberty' regime, amounting to detention, for an initial period of 3 days possible to prolong up to 25 days.

What is important to be also underlined is that, contrary to the new national legal framework regarding Reception and Identification Procedures (Law 4375/2016), the majority of the people registered in the Hotspots in practice have not been provided with reception services, including amongst others identification of vulnerability procedures and special referrals of the vulnerable cases. The failure to offer reception services to all newcomers not only raises major protection issues as such, but also does not guarantee that vulnerabilities can be identified and properly addressed.

**Detention conditions prevailing at the hotspots facilities do not meet the basic standards.**

As the UNHCR has stated in April 2016, "in Lesbos, conditions have been deteriorating at the Moria 'hotspot' facility, which since the 20<sup>th</sup> of March has been used to detain people pending a decision on deportation. There are now some 2,300 people there. This is above its stated capacity of 2,000. People are sleeping in the open, and food supply is insufficient. Anxiety and frustration is widespread. Making matters worse, many families have become separated, with family members now scattered across Greece – and presenting an additional worry should returns begin. On Samos, at the Vathy hotspot, reception conditions have also been worsening. Sanitation is poor, there is little help available for persons with special needs, and food distributions are chaotic. There are currently up to 1,700 people staying at

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<sup>39</sup> To this respect it is underlined that in the *Rahimi* judgment the Court found a violation of article 5 §1 (f) ECHR, due to the fact that the detention of the applicant, an unaccompanied minor, appeared to have resulted from automatic application of the legislation in question, the Greek authorities had given no consideration to the best interests of the applicant as a minor or his individual situation as an unaccompanied minor and no alternatives to detention have been examined (See: ECtHR, *Rahimi v. Greece*, application No. 8687/08, 05-07-2011, par. 108).



the Vial hotspot on Chios, which has a maximum capacity of 1,100. We are very worried about the situation there. Rioting last night left three people with stab injuries<sup>40</sup>". At the Beginning of May 2016, it is reported that due to the overcrowding prevailing at the VIAL Hotspot in Chios island and the lack of adequate government services, the Reception and Identification Service, has withdrawn its activities from the said Hotspot<sup>41</sup>.

The UN Special Rapporteur on the Human Rights of Migrants, after visiting the Hotspot facilities in Lesbos and Samos in May 2016, "expressed particular concern with conditions in the Reception and Identification Centres (RIC or 'hotspots'), which have become closed centres as a result of the EU-Turkey deal, and are creating an unacceptable level of confusion, frustration, violence and fear. He noted, among other worrying issues, the length of process to identify vulnerable migrants, the blatant over-crowding that is amplifying inter-communal friction, the mix of families and young single males, the absence of many Government services during the weekend, the contradictory information received regarding procedures and timelines, as well as insufficient procedural safeguards in detention facilities for migrants<sup>42</sup>".

### **3. Legal remedies against detention**

The guarantee of an effective remedy against detention is still an issue of concern. Despite the amendment of the national legal framework in 2010<sup>43</sup> and a certain positive case-law produced the following years by the Greek Courts, in practice the judicial control of the conditions of detention and the lawfulness *per se* of detention is not always in line with art. 5 par 4 ECHR (*habeas corpus*). The Court has ruled in a number of cases<sup>44</sup> that, despite the amendment of the Greek law, the lawfulness of applicants' detention had not been examined in a manner equivalent to the standards required by art. 5 par. 4 ECHR. To our view, this case law of the Court underlines the lack of an effective legal remedy to challenge immigration detention.

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<sup>40</sup> UNHCR urges immediate safeguards to be in place before any returns begin under EU-Turkey deal Briefing Notes, 1 April 2016, <http://www.unhcr.org/56fe31ca9.html>.

<sup>41</sup> News24.gr, *First Reception Center left the Chios Hotspot*, 7.5.2016, <http://news247.gr/eidiseis/koinonia/ston-aera-h-katagrafh-prosfugwn-sth-xio-apoxwrhse-h-yphresia-prwths-ypodoxhs.4045498.html>

<sup>42</sup> United Nations, Human Rights, Office of the High Commissioner, *Greece: "Europe's lack of political will creating serious suffering for thousands of migrants"* – UN rights expert, 17.5.2016, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19976&LangID=E#sthash.Kb4xrnKb.dpuf>.

<sup>43</sup> Law 3900/2010.

<sup>44</sup> *R.T. v. Greece*, application no 5124/11, 11/2/2016; *Mahammad and others v. Greece*, application no 48352/12, 15/01/2015; *MD v. Greece*, application no 60622/11, 13/11/2014; *Housein v. Greece*, application no 71825/11, 24/10/2013; In the case *F.H. v. Greece*, application no 78456/11, 31/7/2014, the Court found a violation of art. 3 combined with art. 13, due to lack of an effective remedy in the Greek context in order to control detention conditions.





Moreover, according to L. 4375/2016 (art. 14), in case 'a restriction of movement inside the Reception and Identification Center' is imposed, i.e. a Hotspot facility (*de facto* detention), a restricted judicial control is provided by law. In particular according to the relevant provision, no legal remedy is available in order to challenge the initial decision imposing -for a maximum period of 3 days- a 'restriction of movement' inside the Hotspot, tantamount to *de facto* detention measure. A legal remedy against this *de facto* detention measure is provided by law only against the decision prolonging the 'restriction of movement' (for a maximum of 25 days). The fact that persons held at the Hotspot facilities are deprived by law from a legal remedy against a *de facto* detention measure throughout the initial period of confinement is to our view contrary to art. 5 par. 4 ECHR.

### C. Reception Conditions for Asylum Seekers

In 2013 the Greek authorities had committed to provide a total of 2,500 places by the end of 2014 designated for asylum seekers<sup>45</sup>. However this target has not been reached. According to the European Commission's Progress Report<sup>46</sup>, as of 4 March 2016, a total of 1,221 places in facilities dedicated to asylum-seekers and UAMs were available in Greece, which constitutes a "glaring discrepancy" between the number of asylum applications registered in 2015<sup>47</sup> and the number of places available for asylum seekers<sup>48</sup>.

Moreover, as regards the reception places dedicated to the relocation candidates, under the UNCHR accommodation scheme<sup>49</sup>, as of the 1<sup>st</sup> March 2016, a total number of 850

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<sup>45</sup> UN High Commissioner for Refugees (UNHCR), *UNHCR observations on the current asylum system in Greece*, December 2014, <http://www.refworld.org/docid/54cb3af34.html>

<sup>46</sup> European Commission, *Report from the Commission to the European Parliament and the Council, Progress report on the implementation of the hotspot approach in Greece*, 4.3.2016, COM (2016) 141 final, <http://goo.gl/lSrRrC>; for a comment on the numbers published by the European Commission regarding the overall reception capacity of Greece, see: ECRE, *Asylum Information Database, Wrong Counts and Closing Doors: The reception of refugees and asylum seekers in Europe*, March 2016, p. 20, [http://www.asylumineurope.org/sites/default/files/shadow-reports/aida\\_wrong\\_counts\\_and\\_closing\\_doors.pdf](http://www.asylumineurope.org/sites/default/files/shadow-reports/aida_wrong_counts_and_closing_doors.pdf).

<sup>47</sup> According to the Asylum Service, 13.197 asylum applications were submitted in 2015 and as of the end of February 2016, 2.641 asylum applications had been lodged; see Hellenic Republic, Ministry of interiors and Administrative Reconstruction, Asylum Service, *Statistic Data of the Asylum Service (1.1.2015-31.12.2016)*, [http://asylo.gov.gr/wp-content/uploads/2016/01/Greek-Asylum-Service-statistical-data-2015\\_gr.pdf](http://asylo.gov.gr/wp-content/uploads/2016/01/Greek-Asylum-Service-statistical-data-2015_gr.pdf); Hellenic Republic, Ministry of interiors and Administrative Reconstruction, Asylum Service, *Statistic Data of the Asylum Service (1.1.2016-31.1.2016)*, [http://asylo.gov.gr/wp-content/uploads/2016/02/Greek-Asylum-Service-statistical-data-January-2016\\_gr.pdf](http://asylo.gov.gr/wp-content/uploads/2016/02/Greek-Asylum-Service-statistical-data-January-2016_gr.pdf); Hellenic Republic, Ministry of interiors and Administrative Reconstruction, Asylum Service, *Statistic Data of the Asylum Service (1.1.2016-29.2.2016)*, [http://asylo.gov.gr/wp-content/uploads/2016/03/Greek-Asylum-Service-statistical-data-February-2016\\_gr.pdf](http://asylo.gov.gr/wp-content/uploads/2016/03/Greek-Asylum-Service-statistical-data-February-2016_gr.pdf).

<sup>48</sup> See ECtHR, *Tarakhel v. Switzerland*, 29217/12, 04/11/2014, par. 110

<sup>49</sup> UNCHR, *European Commission and UNHCR launch scheme to provide 20,000 reception places for asylum seekers in Greece*, 14.12.2015, <http://www.unhcr.org/566eac399.html>.





persons are reported to have been accommodated<sup>50</sup>, whereas the number of persons under the relocation scheme had been much larger<sup>51</sup>.

Apart from places dedicated to asylum seekers, and due to the prevailing situation in Greece after the closure of the so-called “Balkan route”, i.e. the fact that more than 50.000 are staying in the country, a number of temporary accommodation camps were set up in order to address the needs of these persons. As far as these places are concerned they should be distinguished from the reception places dedicated to asylum seekers. These places are temporary places, located in a variety of facilities (sports venues, old military camps, ex-industrial facilities, the old Athens airport building), aiming to address an urgent situation and not to host asylum seekers. Therefore, said places cannot be considered as reception places in line with the EU Reception Directive and should not be taken into account, when the fulfillment of the obligations of the Greek authorities to ensure reception conditions to asylum seekers is evaluated, as it was the case in the M.S.S. judgment<sup>52</sup>. In any event, the existing places of these facilities are not sufficient<sup>53</sup> and living conditions in a number of these temporary facilities are substandard. *Inter alia* overcrowding, lack of privacy, poor hygienic conditions, lack of information are reported<sup>54</sup>.

#### D. Unaccompanied minors

Despite the intention of the Greek authorities to introduce legislation that would provide a long-term response to the situation of UAM<sup>55</sup>, protection of unaccompanied children in practice is still highly problematic. Particularly, no effective guardianship system is in place and the implementation of fair and proper age assessment procedures is not guaranteed in practice. Moreover, UAMs are not protected from detention and as no sufficient number of

<sup>50</sup> Ministry of Interiors and Administrative Reconstruction, 503/21.3.2016, <http://www.hellenicparliament.gr/UserFiles/67715b2c-ec81-4f0c-ad6a-476a34d732bd/9529938.pdf>

<sup>51</sup> See Asylum Service statistical data, available in: [http://asylo.gov.gr/en/?page\\_id=110](http://asylo.gov.gr/en/?page_id=110)

<sup>52</sup> see para. 263.

<sup>53</sup> The official capacity of the temporary facilities is 34,650 places as of 17.5.2016. At the same day more than 45000 persons were residing at these facilities, see: UNHCR, *Europe Refugee Emergency Daily map indicating capacity and occupancy (Governmental figures)*, 17.5.2016. <http://data.unhcr.org/mediterranean/country.php?id=83>.

<sup>54</sup> Report of the fact-finding mission by Ambassador Tomáš Boček special representative of the Secretary General of the Council of Europe on migration and refugees to Greece and “the former Yugoslav Republic of Macedonia”, 7-11 March 2016, SG/Inf(2016)18, 26 April 2016, [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680648495](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680648495); Amnesty International, *Trapped in Greece: An avoidable refugee crisis*, 2016, <http://www.refworld.org/docid/571db6df4.html>; Human Rights Watch, Greece: Humanitarian Crisis at Athens Port, 24 March 2016, <http://www.refworld.org/docid/56f3ae7a4.html>.

<sup>55</sup> Report of the fact-finding mission by Ambassador Tomáš Boček special representative of the Secretary General of the Council of Europe on migration and refugees to Greece and “the former Yugoslav Republic of Macedonia”, 7-11 March 2016, SG/Inf(2016)18, 26 April 2016, [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680648495](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680648495).



places in special reception facilities for minors exists, often UAMs are detained in detention facilities along with adults.

In particular:

- There is a huge gap in the system of legal guardianship. The role of the Public Prosecutor as a temporary guardian is prescribed by law (Presidential Decree – PD 220/2007), yet in practice this system is completely ineffective. As it is mentioned “the prosecutors lack the capacity to handle the large number of UAMs who are referred to them. Nor can they rely on another state institution for help<sup>56</sup>”.

- There are currently two ministerial decisions providing age assessment procedures for UAM’s: the Decision 92490 /2013 regarding UAM’s within the scope of first reception procedures and the Decision 1982 /2016, regarding UAMs asylum seekers. It is unclear to what extent, if any, those decisions are implemented in practice and in any case they are not applicable by the Hellenic Police, as soon as UAMs are held in detention facilities<sup>57</sup>.

- Detention of UAM is not prohibited by law and UAM are detained for prolonged periods, while waiting for a place in a special accommodation facility to be found. As the Greek Ombudsman stated “according to the data provided by the National Center of Social Solidarity, all shelters (with a total capacity of 432 places) are full, and thus a lot of children (240 as of 29 March 2016) applying for accommodation are still waiting for a place to be found, some of which remain for long periods at police cells under degrading conditions<sup>58</sup>”. As the UN Special Rapporteur mentioned, during his follow – up visit in Greece in May 2016, “I have met unaccompanied children locked in police station cells 24/7 without access to the outdoors for over two weeks and was informed that some may stay for a month [...] As determined by the Committee on the Rights of the Child, detention can *never ever* be in the best interest of a child<sup>59</sup>”.

## Concluding Remarks

GCR is welcoming the efforts made by the Greek Government in order to address the refugee crisis since mid-2015.

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<sup>56</sup> *Idem*.

<sup>57</sup> *Idem*; according to the Report “although the age-assessment procedure does not seem to be problematic *per se*, there are implementation issues. These have resulted in UAMs being identified as adults and being placed, as a result, in detention. Moreover, there do not seem to be any effective means of appealing against the outcome of the assessment”.

<sup>58</sup> Greek Ombudsman, *Intervention of the Greek Ombudsman regarding UAM refugees and migrants*, 30.3.2016, <http://www.synigoros.gr/resources/dt-asynodeytoi-anilikoi-3032016.pdf> (in Greek).

<sup>59</sup> United Nations, Human Rights, Office of the High Commissioner, *UN Special Rapporteur on the human rights of migrants concludes his follow up country visit to Greece*, 17.5.2016, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19972&LangID=E#sthash.UtAn6Vjd.dpuf>



However, taking into consideration the issues analyzed above, it seems that the Greek authorities fall short to comply with their obligations indicated in the framework of the M.S.S. judgment execution.

In particular:

- Access to the asylum procedure is still not guaranteed and remains rather problematic.
- A number of shortcomings regarding the asylum procedure still occur.
- A highly problematic fast-track asylum procedure is applied on the islands, following the EU-Turkey Agreement.
- Detention conditions in the mainland are poor and substandard and alternatives to detention are not applied.
- Automatic *de facto* detention of the newly arrived on the islands is provided by the new legal framework.
- Detention conditions at the hotspot facilities are reported as substandard.
- Living conditions of those to whom residence on the islands is imposed are a matter of concern.
- A very limited number of reception places, as foreseen by the EU Reception Conditions Directive, is provided to asylum seekers and UAMs and by no means do they address the actual needs.
- Living conditions in a number of temporary accommodation camps set up in order to address the emergent and increased needs are reported inadequate.
- An effective guardianship and overall protection system for UAMs is still not established.

**GREEK COUNCIL FOR REFUGEES**

**Athens, 30.5.2016**