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Date: 24/08/2020

DH-DD(2020)716

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Meeting: 1383rd meeting (29 September - 1 October 2020) (DH)

Communication from an NGO (HIAS) (10/08/2020) concerning the cases of M.S.S. v. Belgium and Greece and RAHIMI v. Greece (Applications No. 30696/09, 8687/08).

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 : 1383^e réunion (29 septembre – 1^{er} octobre 2020) (DH)

Communication d'une ONG (HIAS) (10/08/2020) concernant les affaires M.S.S. c. Belgique et Grèce et RAHIMI c. Grèce (Requêtes n° 30696/09, 8687/08) **[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.



Communication

In accordance with Rule 9.2. of the Rules of the Committee of Ministers regarding the supervision of the execution of judgments and of terms of friendly settlements

by HIAS GREECE

in the M.S.S. and Rahimi groups v. Greece (Applications No. 30696/09, 8687/08)

August 2020

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I. INTRODUCTION

Ahead of the 1383rd meeting of the Committee of Ministers of the Council of Europe, HIAS Greece would like to submit its observations with regard to the execution of the judgments of M.S.S. v. Belgium and Greece and Rahimi v. Greece. The aforementioned cases concern the degrading treatment of asylum applicants in Greece on account of their living and detention conditions well as the lack of an effective remedy against expulsion.

HIAS is a global Jewish nonprofit organization that protects refugees—including women and children, and ethnic, religious, and sexual minorities—whose lives are in danger for being who they are. Guided by our values and history, HIAS helps refugees rebuild their lives in safety and advocates to ensure that all displaced people are treated with dignity. HIAS Greece began its operations in 2016 on the Island of Lesbos to increase refugee protection, ensure equal access to rights, and lay the foundation for refugees’ full social integration in Greece. HIAS Greece assists refugees through direct individual legal representation, legal information, and advocating for changes in policy and practice. In August 2017, HIAS opened an office in Athens to expand its advocacy, impact litigation and legal representation.

The observations included in this document are based on the first-hand experiences of HIAS Greece lawyers who represent asylum seekers **on the “hotspot” of Lesbos**. The submission aims at offering an overview of certain key issues relevant to the supervision of the execution of the aforementioned judgments and it is not intended as a comprehensive analysis of the asylum and reception system in Greece.

II. GENERAL MEASURES

1. Asylum procedure and absence of an effective remedy against expulsion

Preliminary findings on the implementation of the new Asylum Law on the Lesbos Hotspot

In November 2019, the Greek State adopted Law 4636/2019 on International Protection and other provisions (“Law 4636/2019”), which entered into force on 1 January 2020. As commented by UNHCR, the

new legal framework “puts an excessive burden on asylum seekers and focuses on punitive measures” as well as “introduces tough requirements that an asylum seeker could not reasonably be expected to fulfil.”¹

As documented by eight free legal aid organizations operating on the island of Lesbos, “the implementation of Law 4636/2019 on the Lesbos Hotspot, during the first three months of 2020, has resulted in: 1. the violation of the obligation to provide material reception conditions, 2. the prioritization and accelerated processing of asylum applicants arriving to the island in 2020, at the expense of earlier arrivals, and the ensuing violation of procedural guarantees, 3. the impossibility to physically access Lesbos Regional Asylum Office’s premises and the authorities’ incapacity to manage the increased workload due to the overpopulation, 4. the violation of the principle of family unity and of the right to family reunification, 5. the violation of the special procedural guarantees for unaccompanied minors and of the principle of the Best Interests of the Child, 6. the abusive application of the new Law’s provisions on the implicit withdrawal of asylum applications, 7. the violation of the right to an effective remedy, 8. the systematic and illegal practice of fictitious notification of negative decisions, 9. the violation of procedural guarantees in readmission procedures, 10. the arbitrary detention of asylum seekers and, 11. excessive procedural obstacles in terms of access to legal representation”.²

Access to asylum procedures and processing time of asylum applications

As of the entry into force of Law 4636/2019, the Regional Asylum Service of Lesbos (“Lesvos RAO”) has prioritised the cases of 2020 arrivals at the expense of pre-2020 arrivals. This has resulted in pre-2020 arrivals having their interview rescheduled for 2021, as their initial appointments for interviews in 2020 are being reassigned to the new arrivals. Conversely, asylum seekers who arrived in 2020 are interviewed within few days to maximum one week after their registration at the Registration and Identification Center (“RIC”) of Moria and before their medical and vulnerability assessment is completed. As a consequence, their right to legal information and assistance as well as the right of vulnerable applicants to “reasonable time for preparation” for their interview,³ is rendered a dead letter. At the same time, the deprioritization of the pre-2020 arrivals has created a significant administrative backlog and has fuelled tensions between older arrivals and newcomers in the camp. Asylum seekers who arrived before 2020 are not provided with any explanation as to the reasons for the rescheduling of their appointments. Due to the measure of geographical restrictions on the “hotspots”, the rescheduling also results in the prolongation of their stay

¹ UNHCR, ‘UNHCR urges Greece to strengthen safeguards in draft asylum law’, 24 October 2019, available at <https://www.unhcr.org/gr/en/13170-unhcr-urges-greece-to-strengthen-safeguards-in-draft-asylum-law.html>

² See Annexed Joint Briefing Paper ‘Observations on the Implementation of Law 4636/2019 on “International Protection and other provisions” at the “Hotspot” of Lesbos’, May 2020 (hereinafter “Annex”), p. 1

³ Articles 12(1)(c), 19 and 22 of the 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 (“Asylum Procedures Directive”), as transposed by Articles 39, 8(f) and 8(g), 69(3), 71(1) of L. 4636/2019, Gov. Gazette A’ 69/01.11.2019, and Article 77(4) of L. 4636/2019

in the abhorrent living conditions of Moria RIC. Recently, the Greek Government announced the launch, together with the International Organization for Migration (“IOM”), of a new pilot program for the assisted voluntary return from the islands of 5000 asylum seekers who arrived before 2020.⁴

Reasoning of asylum decisions

Asylum applications by Syrian nationals are summarily rejected as inadmissible on the basis that Turkey is a safe third country for them, without an individualised assessment in consideration of their particular circumstances. It has been observed that both first and second instance decisions use boilerplate reasoning and outdated country information.

Rejection of asylum applications on the basis of “implicit withdrawal”

Law 4636/2019 foresees the possibility to reject an asylum application as unfounded on the basis of “implicit withdrawal” due to “lack of cooperation” on the part of the asylum seekers.⁵ The duty of cooperation is not sufficiently defined in the Law, but includes the instance of non-cooperation with the authorities for the “swift examination” of the asylum application. This provision is often interpreted overly broadly by the asylum authorities. For example, it has been invoked for the rejection of applications of asylum seekers who requested that their interview take place in their mother tongue and not in the language they had initially declared, because they could not understand the interpreter.⁶

Fictitious notification of decisions

Pursuant to Law 4636/2019, Lesvos RAO communicates the decisions on asylum applications to the Head of RIC, who must then serve them on the applicants concerned. If the applicants are not found in Moria camp or in the adjacent Olive Grove within three days, Lesvos RAO serves the decision on the Head of Moria RIC and the applicants concerned are considered notified (“fictitious service”) for the purposes of the Law. The deadline for the submission of the appeal begins on the day following the “fictitious notification”. No information is included in the applicants’ file as to the procedure that the Head of Moria RIC followed in order to locate these persons before concluding that they could not be found. To be noted that, in any case, the applicants approach Lesvos RAO every 30 days in order to renew their asylum applicant’s cards. As a result of the above practice, when the applicants approach Lesvos RAO, they are

⁴ Παραπολιτικά, ‘Μηταράκης: Σε λειτουργία το πρόγραμμα των 5 χιλιάδων εθελοντικών επιστροφών από τα νησιά σε χώρες προέλευσης’, 29 July 2020, available at <https://www.parapolitika.gr/politiki/article/1060041/mitarakis-se-leitourgia-to-programma-ton-5-hiliadon-ethelodikon-epistrofon-apo-ta-nisia-se-hores-proeleusis/#.XyFFyAueOoY.twitter>

⁵ Article 81(1)(e) in conjunction with Article 78 of L. 4636/2019

⁶ See Annex, p. 8

detained for the purposes of readmission on the grounds that the time limit for lodging an appeal has expired⁷.

Access to legal assistance at the appeal stage

As of May 2018, and with the exception of short intervals, there has been no Registry lawyer (lawyer registered with the State free legal aid scheme) assigned to Lesbos RAO. Law 4636/2019 provides that the appeal brief must mention specific grounds for appeal, otherwise it will be rejected as inadmissible. At the same time, the rejection decision is not translated to the applicants. This resulted in a significant number of persons completely forfeiting their right to appeal.

Due to the lack of capacity to respond to the significant increase of legal aid demands, many organizations started providing rejected asylum seekers with a standardised (usually one page) appeal template, which, as such, does not contain specific grounds for appeal. HIAS Greece alone has provided 312 such templates since the entry into force of Law 4636/2019 (1 January 2020). It should be noted that all 312 persons had already applied for free legal aid under the Registry scheme before approaching our offices. However, they never received any reply to their applications and, in most cases, they were instead advised by Lesbos RAO, EASO and RIC officers to request standardised appeal templates from NGOs.

As seen above, in view of the requirements of the new Law, such appeals risk being rejected as inadmissible. In any case, the provision of standardised templates, which do not include any specific grounds for appeal or legal analysis, could by no means be considered as “legal assistance and representation in appeals procedures” for the purposes of Article 20 of the 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 (“Asylum Procedures Directive”).

Asylum seekers in administrative detention are particularly affected by the lack of State-funded lawyers, as they are unable to access free legal aid organizations and private lawyers or submit documentary proof of their claims.

Since the end of June 2020, Lesbos RAO has started referring rejected asylum seekers from Moria RIC to Registry lawyers assigned to other Regional Asylum Offices. Nevertheless, this new system has been marred with numerous weaknesses. On the one hand, the rejected asylum seekers complain that they never hear back from Lesbos RAO as to whether their case has indeed been assigned to a Registry lawyer or that they have not been contacted by any Registry lawyer despite the expiration of the deadline for the submission of their appeal. Conversely, Lesbos RAO contends that they have been unable to reach the appellants on the phone. However, the latter argue that they are being sent away whenever they approach the gate of Lesbos RAO for updates regarding their application for legal aid.

⁷ See Annex, p. 13

Lesvos RAO suspended its services to the public from 13 March to 15 May 2020 as a COVID-19 prevention measure. Although the deadline for the submission of appeals was suspended during the closure of the Asylum Service, it was decided that the appeal hearings already programmed for this period were to take place as scheduled. Nevertheless, the legal representatives of the applicants were not allowed to attend the hearings due to COVID-19 concerns. At the same time, asylum seekers without a lawyer had no means of submitting documentary proof of their claims, as they are often not familiar with the use of e-mail and have no access to internet. This was exacerbated by the ongoing measures of restriction of movement within the RICs.⁸

The issuance and notification of decisions continued throughout the suspension of Lesvos RAO's services. From 1 March to 15 May, Lesvos RAO communicated to Moria RIC first instance negative decisions for 991 persons. Only 481 out of these persons were indeed located by Moria RIC;⁹ in the rest of the cases, it is assumed that the decisions were "fictitiously served" (see above). None of the 481 persons were provided with a Registry lawyer, while, at the same time, their access to free legal aid organizations was virtually impossible, due to the ongoing COVID-19 measures restricting their movement within Moria RIC. Rejected asylum seekers who, after the resumption of the 10-days appeal deadline, travelled to Mytilene town (Lesvos) in search of legal aid, were issued 150 euros fines for violating the movement restriction measures. At the same time, free legal aid organizations were unable to respond to this simultaneous mass demand and had to resort to the provision of standardised appeal templates. Therefore, the great majority of these 481 persons did not have access to an effective legal remedy against their rejection decision.

The minimum time that it takes for Lesvos RAO to provide appellants with copies of the audio-recorded file of their asylum interviews is one month, as the request has to be processed by their IT department in Athens and the audio-file has to be sent to Lesvos RAO by post. This means that it is impossible for the appellants, or their lawyers, to have access to the audio file within the very short deadline for the submission of the appeal in the border procedures (10 days). To be noted that, when the interview is audio-recorded, the applicants are not required to certify the accuracy of the content of the interview transcript. Therefore, the audio file is the only authentic documentation of the content of the interview. The obligation of the authorities to provide access to the audio file of the asylum interview in the appeals procedures is also foreseen in Article 17 of the Asylum Procedures Directive.

⁸ For the latest prolongation of these measures, see Joint Ministerial Decision Δ1α/ΓΠ.οικ. 48940/2020 Gov. Gazette B' 3168/01.08.2020, which extends the movement restriction measures for residents of RICs and of accommodation facilities for third country nationals up to 31 August 2020.

⁹ Information provided on 9 June 2020 by Lesvos RAO to the Greek Ombudsman, in the framework of a complaint submitted by the Legal Aid Working Group of Lesvos on 19 May 2020.

On the other hand, the new Law requires that appellants under the measure of geographical restrictions on the islands submit an attestation by KEP (“Citizens Service Centre”) or the Police, certifying that they appeared in front of the respective authorities on one of the last two days before the scheduled hearing at the Appeals Authority in Athens. This attestation has to be sent to the Appeals Authority by the day before the hearing, **otherwise the appeal will be rejected as manifestly unfounded**.¹⁰ Nevertheless, no such attestation was provided by KEP or the Police until July 2020. After the intervention of free legal aid organizations, KEP agreed to certify the authenticity of the signature on pre-drafted “solemn declarations”. According to instructions received by the Appeals Authority, the appellants should declare that they cannot travel to Athens due to the measure of geographical restrictions—although this information is known to the authorities—and reiterate their interest in their appeal being examined. These declarations must be filled in in Greek. However, no solemn declaration forms are provided by Lesvos RAO. Pursuant to a Joint Ministerial Decision issued in July 2020,¹¹ KEP is now providing appellants with standardised templates for the request of such attestations. However, both Lesvos RAO and KEP are refusing to help the appellants fill in the templates with their personal information, invoking their increased workload.

Suspension of access to asylum during the month of March 2020

On 2 March 2020, the Greek government adopted an “Act of Legislative Content” (Emergency Legislative Order) which provided for the suspension, for one month, of the submission of asylum applications for “persons who enter illegally in the country”. The Act also envisaged their return, without a registration, to their “country of origin or home country”.¹² The Act applied retroactively as of the 1st of March 2020. This flagrant violation of the right to seek asylum was publicly criticised by both UNHCR and the National Commission for Human Rights.¹³

Pursuant to this Act, persons who arrived to Lesvos in search of international protection during March 2020 were treated as irregular migrants and not as asylum seekers. They were subjected to deportation procedures and pre-removal detention in a military vessel, in abhorrent conditions (see below) and are facing criminal charges for irregular entry. Seven men were convicted for irregular entry on the very day of their arrival and are currently serving 3,5 years prison sentences. Three unaccompanied minors have been notified that their trial will take place on 12 October 2020. The criminal trials for the rest of the

¹⁰ Article 78(3) of L. 4636/2019 as amended by Article 11(2) of L.4686/2020, Gov. Gazette A’ 96/12.05.2020

¹¹ Joint Ministerial Decision 17679 ΕΞ 2020, Gov. Gazette, Β’ 2845/13.07.2020

¹² Emergency Legislative Order of 2 March 2020, Gov. Gazette, Α’ 45/02.03.2020

¹³ UNHCR, ‘UNHCR statement on the situation at the Turkey-EU border’, 2 March 2020, available at <https://www.unhcr.org/news/press/2020/3/5e5d08ad4/unhcr-statement-situation-turkey-eu-border.html>;
ΕΕΔΑ, ‘ΔΗΛΩΣΗ ΕΕΔΑ: Επανεξέταση των πολιτικών ασύλου και μετανάστευσης και διαφύλαξη των ανθρωπίνων δικαιωμάτων στα σύνορα της ΕΕ’, 5 March 2020, available at http://nchr.gr/images/pdf/nea_epikairothta/EEEDA_Dilosi_Synora_Olomeleia.pdf

persons who arrived to Lesbos in March 2020—approximately 850 individuals,¹⁴ —have not been scheduled yet.

As foreseen in the Act, none of these persons were allowed to apply for asylum. Those with family members in Europe were also unable to reunify with their families under the family reunification procedures of Dublin III Regulation. The detention and deportation decisions were never interpreted to the March arrivals in a language that they could understand, nor were they ever informed about the available legal remedies or avenues to obtain legal aid. Lawyers' access to the detained asylum seekers was refused by the Police and Port Authorities on the basis of national security and operational considerations. Although the lawyers' right to meet their clients was confirmed by Mytilene's Public Prosecutor, the respective authorities would often declare themselves incompetent to grant access to the detained asylum seekers. Even when the legal representatives were able to visit their clients, their communication remained seriously hindered, due to the very limited time granted by the authorities and the lack of appropriate space where they could communicate in confidence.

Additionally, the detention and deportation orders included contradictory information. Whereas the former decisions referred to repatriation to the country of origin (as foreseen in the Law), the latter provided for readmission to Turkey under the EU-Turkey Statement, which created confusion and legal uncertainty. Likewise, all appeals submitted against the deportation orders were summarily rejected by the second instance Administrative authority (General Regional Police Director of the Northern Aegean), without addressing any of the arguments raised by the appellants. According to the second instance decisions, the authority had "acted legally at the moment of the issuance of the decisions in accordance with the provisions in force".¹⁵ Therefore, the available remedies were neither accessible nor effective.

Certification of Victims of Torture

According to Law 4636/2019, victims of torture are certified by public hospitals, military hospitals or appropriately trained public healthcare providers, including forensic doctors,¹⁶ as foreseen in domestic legislation since 2018.¹⁷ The exclusive competence of these entities for the certification of victims of torture has been twice confirmed by the Administrative Courts of Greece.¹⁸ In fact, in one of these cases,

¹⁴ HIAS, 'Criminal charges pressed against the asylum seekers who arrived in Lesbos in March 2020', 6 July 2020, at https://www.hias.org/sites/default/files/greece-eng_criminal_charges_against_all_arrivals_of_march_final.pdf

¹⁵ Decisions on file with the author.

¹⁶ Article 61(1) of L. 4636/2019

¹⁷ Article 23(1) of L. 4540/2018, Gov. Gazette A' 91/22.05.2018

¹⁸ Immigration.gr, 'ΔΕΦΠειρ (Α1/Πρ) 20/2019: Πιστοποίηση θυμάτων βασανιστηρίων μετά την ισχύ του ν.4540/2018', available at <http://www.immigration.gr/2019/03/pistopoihsh-thymatwn-vasanisthriwn-meta-isxy-nomou-4540-2018.html>; Immigration.gr, 'ΔΕΦΠειρ 206/2019: Ευαλωτότητα και ισχυρισμοί περί βασανιστηρίων στη χώρα καταγωγής', available at '<http://www.immigration.gr/2019/05/h-diagnqstheisa-eyalototita-den-synepagetai-oti-o-allodapos-ypesth-ta-epikaloumena-vasanisthria-sth-xora-katagogis.html>

the Court ruled that the certificate provided by the NGO “METAdrasi” (in English: “METAction”), attesting that the applicant was a victim of torture, was not enough to refute the Appeals Committee’s finding that the applicant’s claim of torture lacked credibility. To be noted that the identification and certification program for victims of torture implemented by METAdrasi is the only certification program in Greece which is based on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Istanbul Protocol”). Nevertheless, according to the Court, the applicant should have applied for certification by one of the aforementioned healthcare providers.

However, the only public hospital of Lesbos, “Vostaneio” hospital, does not provide certification services to victims of torture. All applications for certification submitted by HIAS Greece’s beneficiaries have been refused, either on the basis that there is no “special committee for psychosocial support” in the Hospital or because, according to Vostaneio, the Public Prosecutor should first file an order to this effect with the Forensic Department of the Hospital. Nevertheless, the Public Prosecutor of Mytilene has refused to proceed to such an order, on the basis that the Hospital’s competence to provide certification services is expressly provided in the Law. On 10 January, “Evangelismos” Hospital in Athens informed a HIAS Greece beneficiary that the hospital does not provide such services either. On 22 February 2020, HIAS Greece addressed a letter to the Ministry of Health requesting information as to which hospitals provide certification services, but no reply has been received to date. To HIAS knowledge, no asylum seeker has been able to access certification services by a public entity, within the meaning of the aforementioned law, to date.

The recognition of asylum seekers as victims of torture is inextricably linked to the proper examination of the merits of their application for international protection and, therefore, to the compliance with the principle of *non-refoulement*. In its General Comment 4, the U.N. Committee Against Torture called upon States to take legislative, administrative, judicial and other preventive measures to prevent potential violations of the principle of *non-refoulement*. These measures include the referral to an independent medical examination free of charge for any individual alleging to have been tortured, in accordance with the Istanbul Protocol.¹⁹ The obligation of the authorities to make sure, if doubts remain, that expert opinions are obtained for applicants who make a *prima facie* case that they have been tortured has also been confirmed by the European Court of Human Rights in *R.C. v. Sweden*.²⁰ At the same time, the lack of access to certification services results in the processing of their asylum applications under the border

¹⁹ UN Committee Against Torture (CAT), *General Comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22*, 9 February 2018, para. 18, available at <https://www.refworld.org/docid/5a903dc84.html>

²⁰ ECtHR, *R.C. v. Sweden*, Application No. 41827/07, 9 June 2010, para. 53, available at <http://hudoc.echr.coe.int/eng?i=001-97625>

procedures and not under the regular asylum procedures, although victims of torture are considered to be in need of “special procedural guarantees” which cannot be provided under the former procedures.²¹

Processing of asylum applications of LGBTIQ+ individuals

The following assessment has been produced by the Lesvos *LGBTIQ+ Refugee Solidarity* collective of Lesvos,²² for the purposes of the present submission, and draws on research conducted over a period of six months, from February 2020 to July 2020. The information provided is based on extensive group discussions, individual testimonies of LGBTIQ+ refugees as well as interviews with other actors on the island, such as lawyers, doctors and psychologists.

According to consistent reports, asylum officers routinely resort to particularly invasive methods to investigate the credibility of asylum claims submitted by LGBTIQ+ individuals. Several members of the Group have reported unnecessarily sexually explicit questioning, including one participant who was requested to re-enact his rape. In addition, participants have described the hostile behavior of the interpreters towards their sexual orientation, gender identity, gender expression and sex characteristics (“SOGIESC”). The blatant homo- and transphobia of certain interpreters is such that, in some cases, the latter refused to translate specific sentences, telling the applicants that they were “sinners”. In some cases, the translators refused to translate sex-related statements or to even complete the interview. In other instances, it appears that interpreters lacked basic understanding of SOGIESC terminology and, as a result, regularly confused terms like “gay” and “trans”. In one case, the interpreter translated the word “gay” as “pedophile”. The reported lack of LGBTIQ+ —sensitive behavior on the part of both caseworkers and interpreters, have resulted in several applicants not disclosing their sexual orientation or gender identity during their asylum interview. Conversely, this has led other participants to answer unnecessarily intrusive questions, out of fear that their refusal would have a negative impact on their application. As it transpires from the accounts collected, the caseworkers lack appropriate training and are influenced by homophobic, but also western-centric understandings of LGBTIQ+ identities. Illustratively, numerous

²¹ Article 67, L. 4636/2019 and Article 24 of the Asylum Procedures Directive.

²² Lesvos LGBTIQ+ Refugee Solidarity describes its activity in Lesvos as follows: “Lesvos LGBTIQ+ Refugee Solidarity has been active as a grass-roots collective since July 2017. It came into existence organically, as members of the LGBTIQ+ refugee community began to identify members of the non-refugee LGBTIQ+ community as trusted points of contact and support, in the abject absence of any actor on the island providing specific information or support to the LGBTIQ+ refugee community. Members of the group are people who identify as LGBTIQ+ and are living in Lesvos as refugees, volunteers, and locals. Although the group has no official status as an organization other than a solidarity and support group, it regularly meets every week to provide a safe space to talk, organize and share useful information specific to LGBTIQ+ refugees.”

LGBTIQ+ asylum applications have been rejected on the grounds that the applicant's behavior did not appear "gay/trans enough" or was, paradoxically, considered "too girlish" to be deemed "authentic".

2. Living conditions of asylum seekers

The measure of geographical restrictions and the situation of vulnerable persons

Law 4636/2019 no longer foresees that vulnerable asylum seekers arriving to the Greek island "hotspots" will be automatically exempted from the "border" asylum procedures and instead referred to the "regular" procedure in mainland Greece. Such referral is now only possible if it is considered that these persons are in need of special procedural guarantees and that no "sufficient support" can be provided to them within the border procedures. As provided in the Law, types of "sufficient support" include the "possibility of extra breaks during the personal interview", the possibility of the asylum seekers to "move during the personal interview" and the lenience in case of non-major inconsistencies and contradictions if related to their state of health.²³ In addition, the measure of the geographical restrictions on the island "hotspots" can only be lifted in the following cases: unaccompanied minors, Dublin III Regulation family reunification cases, persons whose applications can reasonably be considered to be well founded, and persons belonging to vulnerable groups or who are in need of special reception conditions, as long as it is not possible to provide them with appropriate support, within the meaning provided above.²⁴ To date, the authorities have not clarified which cases could be considered as "in need of special reception conditions" for which no "appropriate support" is available within the border procedures.

As a consequence, the population of Moria RIC reached, in January 2020, the unprecedented number of 20,000 persons²⁵, and is currently at 14,459 persons.²⁶ To be noted that Moria RIC has an official capacity of 2,840 people.²⁷ This has led to the further degradation of the already well-documented abhorrent living conditions in the camp and to the complete collapse of the available services, especially access to medical screening and healthcare.²⁸

²³ Article 67(2), L. 4636/2019

²⁴ Ministerial Decision 1140, Gov. Gazette B' 4736/20.12.2019, para. 16(2)

²⁵ Financial Times, 'Overcrowding in Moria refugee camp has reached breaking point', 25 February 2020, available at <https://www.ft.com/content/013d95d6-54d3-11ea-a1ef-da1721a0541e>

²⁶ UNHCR Greece, Weekly Snapshot Lesbos, 27 July 2020-2 August 2020

²⁷ European Council on Refugees and Exiles, 'Asylum Information Database, National Country Report: Greece', 23 June 2020, p.36, available at <https://www.asylumineurope.org/reports/country/greece>

²⁸ See e.g. UNHCR, 'UNHCR calls for decisive action to end alarming conditions on Aegean islands', 7 February 2020, available at <https://www.unhcr.org/news/briefing/2020/2/5e3d2f3f4/unhcr-calls-decisive-action-end-alarming-conditions-aegean-islands.html>

The lack of clarity as to the types of cases for which the geographical restrictions may be lifted has added to the already significant delays in the transfer of vulnerable asylum seekers to mainland Greece, with often irreversible health consequences for them. Although the Government's Action Plan refers to criteria for the handling of "request[s] for provision of accommodation" (vulnerability and ethnic characteristics, according to the Plan),²⁹ there is in practice no procedure whereby asylum seekers can apply for accommodation and special reception conditions on their own. The placement in appropriate reception conditions is entirely dependent on the identification and follow-up of such cases by the Moria RIC authorities. In the end of May 2020, the Moria RIC authorities requested the assistance of NGOs operating in Lesvos for the identification and referral of vulnerable asylum seekers who should be transferred out of the camp. However, no specific information was provided as to which types of vulnerable persons would be eligible for the lifting of the geographical limitations.³⁰ At the same time, although the Action Plan mentions the Government's commitment to increase the accommodation capacity for asylum seekers, the Minister of Migration and Asylum recently announced the closure of 80 accommodation facilities in the mainland by the end of the year³¹ as well as plans to reduce the total number of accommodation slots and facilities.³²

HIAS Greece has handled the case of a newborn child who was diagnosed with a congenital cardiac malformation by Vostaneio Hospital in Mytilene. In the end of January 2020, the Hospital requested the immediate transfer of the girl to Athens so that she could undergo urgent and necessary surgery, as there was no pediatric cardiologist in Vostaneio Hospital. However, the child passed away in the middle of April 2020 and while still in Moria RIC, on account of the significant delays in the procedure for the lifting of the geographical restrictions. HIAS Greece has also represented the cases of two HIV positive applicants whose disease progressed dramatically, due to the lack of antiretroviral treatment in Lesvos. However, they had to remain in Moria RIC for more than four months before their condition was medically confirmed and they were transferred to the mainland. When, pursuant to a Rule 39 application, the Court

²⁹ 1383rd meeting (29 September-1 October 2020) (DH) - Action plan (25/06/2020) - Communication from Greece concerning the groups of cases of M.S.S. v. Greece (Application No. 30696/09) and Rahimi v. Greece (8687/08), para. 2(a), available at [http://hudoc.exec.coe.int/eng/?i=DH-DD\(2020\)571E](http://hudoc.exec.coe.int/eng/?i=DH-DD(2020)571E)

³⁰ According to Articles 39(5)(d) and 58(1) of L. 4636/2019, the following groups are considered as vulnerable groups: children; unaccompanied children; direct relatives of victims of shipwrecks (parents and siblings); disabled persons; elderly; pregnant women; single parents with minor children; victims of trafficking; persons with serious illness; persons with cognitive or mental disability and victims of torture, rape or other serious forms of psychological, physical or sexual violence such as victims of female genital mutilation.

³¹ Mitarakis, 'Η φύλαξη των συνόρων, οι μειωμένες ροές και η επιτάχυνση των διαδικασιών ασύλου μας επιτρέπουν να κλείσουμε τις 60 από τις 92 δομές στην ενδοχώρα μέχρι το τέλος του έτους' 9 June 2020, available at <https://www.mitarakis.gr/gov/migration/6167-open>

³² Το Πρώτο Θέμα, 'Μεταναστευτικό - Μηταράκης: «Στόχος το κλείσιμο 60 δομών εντός του 2020»', 5 June 2020, available at <https://www.protothema.gr/politics/article/1013903/metanasteutiko-mitarakis-stohos-to-kleisimo-60-domon-edos-tou-2020/>

asked the Government to indicate the date of the transfer of one of these two applicants to the mainland, the Government replied that they were “not in a position to know the exact date of this transfer, which necessarily depends on the planning done by UNHCR”.³³ The Government’s reply is also indicative of the lack of governmental oversight for outsourced functions, although the Court has repeatedly affirmed that States cannot absolve themselves from their responsibilities under the Convention by delegating their obligations to private bodies or individuals.³⁴ As a result of the non-access to antiretroviral treatment while in Moria camp, one of these two cases has now been diagnosed with HIV-related aggressive cancer. The aforementioned cases are illustrative of the inhuman and degrading nature of the living conditions in Moria RIC and the deplorable consequences of the measure of geographical restrictions.

Security Situation in Moria RIC

The overpopulation of Moria RIC, in combination with the abysmal living conditions and the complete collapse of essential services, has led to a dramatic surge in gang violence, interracial hostilities as well as drugs and alcohol-induced incidents. In August 2019, an unaccompanied minor was stabbed to death and two others were seriously injured after a fight erupted in the IOM “safe zone” for unaccompanied children where they resided.³⁵ Since 1 January 2020, the Hellenic Police has recorded an alarming number of 19 serious assaults with the use of weapons (knives and improvised batons, among others), in addition to less serious or minor knife injuries. These attacks have killed seven people and caused serious, life threatening, injuries to 18 others.³⁶ The Hellenic Police is responsible for ensuring security within the RIC. However, the number of police officers patrolling the camp is 10-13 per shift, in addition to short-term private security staff working morning shifts.³⁷ As a result, police forces are insufficient to guarantee the security of the vast and massively overpopulated camp and the adjacent Olive Grove and focus mainly on the protection of the employees of RIC, at the expense of the safety of the asylum seekers. At the same time, applicants who wish to file a criminal complaint are required to travel to Mytilene Police Station, as there is no Police Station within Moria RIC. However, they are usually not provided with any information as to the complaint pathways, while access to justice is further hindered by the lack of interpretation

³³ Case on file with the author.

³⁴ See, e.g. ECtHR, *Kotov v. Russia [GC]*, Application No. 54522/00, 3 April 2012, para. 92, available at <http://hudoc.echr.coe.int/eng?i=001-110023> ; *Vukota-Bojic v. Switzerland*, Application No. 61838/10, 18 October 2016, para. 47, available at <http://hudoc.echr.coe.int/eng?i=001-167490>

³⁵ UNHCR, ‘UNHCR shocked at death of Afghan boy on Lesbos; urges transfer of unaccompanied children to safe shelters’, 25 August 2019, available at <https://www.unhcr.org/gr/en/12705-unhcr-shocked-at-death-of-afghan-boy-on-lesvos-urges-transfer-of-unaccompanied-children-to-safe-shelters.html>

³⁶ Ekathimerini, ‘Afghan man killed in Moria brawl’, 27 July 2020, available at <https://www.ekathimerini.com/255174/article/ekathimerini/news/afghan-man-killed-in-moria-brawl> and KeepTalkingGreece, ‘16-year-old Afghan boy stabbed to death in Moria camp’, 8 April 2020, available at <https://www.keeptalkinggreece.com/2020/04/08/moria-afghan-teenager-stabbed-death/>

³⁷ Voria.gr, ‘Αστυνομικοί Λέσβου για Μόρια: 13 αστυνομικοί για 13.000 μετανάστες’, 7 October 2019, available at <https://www.voria.gr/article/astinomiki-lesvou-gia-moria-13-astinomiki-gia-13000-metanastes>

services both within Moria RIC and at Mytilene Police Station. Consequently, complaints are filed with significant delays and investigations are hampered by the impossibility to take prompt measures, such as *in flagrante delicto* warrantless arrests.

Sexual and Gender-Based Violence in Moria RIC

The police authorities cannot ensure the security and safety of survivors of sexual and gender-based violence (“SGBV”) in Moria RIC. Sections C and D of Moria RIC, which are designated to host women victims of domestic and sexual violence, are only guarded by a single, short-term contract, employee with no relevant training, and only for a few hours per day. As of April 2020, Section C has reached its full capacity of 400 women and children. The remaining SGBV survivors do not have access to a safe shelter. The UNHCR-run facilities are not suitable for the accommodation of SGBV survivors, as they cannot ensure safe and confidential housing and remain accessible to the perpetrators. At the same time, migrants are not eligible for accommodation in the Lesbos shelter for victims of domestic violence and survivors of human trafficking.

Furthermore, as seen above, reporting of SGBV incidents in Moria RIC is virtually impossible.³⁸ In addition, both the police authorities’ response to such incidents and the forensic assessment by the hospital take place with significant delays, due to, among others, the limited capacity of the services involved. This not only puts survivors’ physical integrity and life at further risk, but also leads to the delayed and, hence, ineffective administration of PEP (post-exposure prophylaxis) and undermines their effective access to justice.

LGBTIQ+ asylum seekers

According to the aforementioned assessment of the Lesbos *LGBTIQ+ Refugee Solidarity* collective of Lesbos, numerous LGBTIQ+ individuals reported that they have been victim of at least one violent incident, while some claimed to have received death threats. Several participants declared that they have been physically attacked two or more times by other asylum seekers. Threats to physical safety was one of the most pressing concerns of the LGBTIQ+ asylum seekers participating in the present assessment. Virtually all described regular harassment from other asylum seekers. They reported being beaten, sexually assaulted, threatened with knives and propositioned for sex. The lesbians interviewed described feeling very vulnerable as single women in addition to their LGBTIQ+ identity.

A group of trans women, who have since left the island, reported that they had been victims of forced sex work within Moria RIC, under the threat of violence. All trans persons involved in the present assessment have confirmed that sexual exploitation and other forms of sexual violence is particularly common at the

³⁸ Centre for Research on Women’s Issues DIOTIMA, “*Final Report: Accessibility and barriers to Gender-Based Violence Services for refugee and migrant girls, boys, women and men in Greece*”, December 2019, p.47, available at https://diotima.org.gr/wp-content/uploads/2019/12/FINAL-REPORT_ENG.pdf

hotspot of Lesbos. Many people identifying as gay have raised similar concerns. One gay member described how, after having initially engaged in consensual sexual intercourse, he was forced to perform sexual acts with other people, under the threat of violence and of having his sexual orientation disclosed in the camp. Several people declared that they had been victim of rape, some on repeated occasions and by different people. Numerous individuals expressed exhaustion at the dehumanizing sensation of having to constantly suppress fundamental parts of their identity in order to stay safe in Moria RIC.

Members of the LGBTIQ+ refugee community are reluctant to report these incidents to the police authorities, as they are often met with homophobic and transphobic comments as well as threats and violence from police officers. It transpires from their account that the officers do not take them seriously and are unwilling to record their complaints of violent attacks or rape perpetrated against them. In particular, accounts were given of police officers threatening asylum seekers to arrest, detain and deny them asylum if it was found that they had lied. Two persons claimed that police officers pointed at a prison cell and told them they would end up in it. At the same time, members of the group have described a lack of response when incidents of homophobic or transphobic abuse are reported to authorities, especially when these occur within Moria RIC. It appears that the police officers patrolling in the camp are reluctant to interfere in cases of homophobic or transphobic assaults. In particular, one trans woman stated that she had approached police officers in Moria RIC, while she was covered in blood following a violent attack against her, but the police did not intervene. Finally, the findings in relation to the lack of access to justice and protection for SGBV survivors (see above) are also applicable here.

COVID-19 Quarantine Conditions

As of 22 March 2020, all asylum seekers who arrive to Lesbos are placed in quarantine as a COVID-19 prevention measure. In particular, on 22 March 2020, 32 persons landed in the area of Palio area, Agios Stefanos, Mantamados and were left to sleep on the ground of the main road during the first night. On the following day, they were moved to a ditch between a trail road and a beach (Chrysi Ammos). They were given two tents by UNHCR. The 32 persons were divided in two tents, without the possibility to respect any measure of social distancing or any separation between men, families, women and unaccompanied minors. They had to endure very low temperatures, especially at night, due to the extreme humidity and strong winds on the beach. They did not have access to sanitary facilities and, hence, had to urinate and defecate in nearby bushes where they often encountered snakes. Their limited living area was quickly covered in excrements and the surrounding smell was unbearable. After they had finished the single roll of toilet paper which was given to them, and in the absence of clean running water, they had to clean themselves in the sea. Many of the asylum seekers did not know how to swim and were terrified of drowning. Among these asylum seekers, there were two infants, two unaccompanied minors, a woman at an advanced stage of pregnancy, one person suffering from coronary heart disease and another suffering from an autoimmune disease. The food and water provided was insufficient and they

never received any blankets or hygiene items, such as soaps and hand sanitizers. Their living area was only guarded by officers of the Port Authority from 7 a.m. to 3 p.m. Vulnerable asylum seekers, especially single women and unaccompanied minors, were therefore left exposed to risks of physical violence, including sexual abuse, for most parts of the day.

Likewise, on 23 March 2020, 56 asylum seekers landed near Petra and had to stay near the harbor, in tents provided by UNHCR, under very bad weather conditions. The group included unaccompanied minors (ranging from 10 to 15 years old), victims of violence and, reportedly, one person with rheumatoid arthritis, hypothyroidism and multiple sclerosis and one with coronary heart disease who had also undergone a bypass surgery. On 1 April 2020, 39 asylum seekers arrived near Klius area and had to initially sleep in a ditch by a trail road. They were later moved to a nearby chapel's stockyard. The group included unaccompanied minors, two single mothers and seven children (ranging from 2 to 11 years old). Some asylum seekers were suffering from serious medical and mental health issues, including a person with multiple sclerosis under cortisone treatment and one person with cardiological and blood circulation issues. Just like in Palio, there was no access to toilets, showers or clean running water in these locations and no distribution of blankets or hygiene products, such as soaps and hand sanitizers. Additionally, food portions and water were provided in insufficient quantity.

The aforementioned persons had to stay in these inhuman and degrading conditions even after the expiry of the official 14-day quarantine and until 27 April 2020, when they were eventually transferred to Moria RIC. It should also be noted that the Public Prosecutor, who acts by law as temporary guardian for unaccompanied minors, was never informed by the authorities of the presence of unaccompanied minors in the aforementioned informal quarantine areas.

On 28 May 2020, pursuant to a complaint submitted by HIAS Greece, the Greek Ombudsman addressed a letter to the Moria RIC authorities, the Police and the Asylum Service, requesting information about, among others, the rationale for the non-placement of new arrivals in appropriate quarantine areas and for the extension of the quarantine beyond 14 days. No reply has been received to date from the aforementioned authorities. To be noted that the degrading treatment of the new arrivals has also been publicly criticized by the Association of Doctors of the Public Health System of Lesbos.³⁹ Nevertheless, the practice of quarantine of newcomers in sub-standard conditions seems to have resumed in July 2020.⁴⁰

³⁹ See also Association of Doctors of the Public Health System of Lesbos, 'ΝΕΕΣ ΑΦΙΞΕΙΣ ΚΑΙ ΜΕΤΡΑ ΑΠΟΜΟΝΩΣΗΣ', 29 April 2020, available at: <https://eiesylesvou.wordpress.com/>

⁴⁰ StoNisi, 'Κατά τα άλλα μέτρα για τον κορονοϊό!', 22 July 2020, available at: <https://www.stonisi.gr/post/10223/kata-ta-alla-metra-gia-ton-koronoio>

Access to social rights

Issuance of a Tax Registration Number (“AFM”) is a necessary prerequisite for the access to social rights and benefits. Namely, the AFM is a precondition for access to employment and housing as well for eligibility under the Social Solidarity Income and for registration with the Unemployment Office (“OAED”). However, the Tax Office of Mytilene, refuses to issue an AFM for asylum seekers and refugees unless they can furnish one of the following documents: 1. a solemn declaration by the future employer that they intend to hire the applicant in question, 2. a solemn declaration by the future landlord that they intend to rent their property to the applicant, 3. a bank statement confirming that the person concerned applied for a bank account or 4. “other documents substantiating the reasons” for which the person concerned is applying for an AFM. To be noted that none of these requirements are foreseen in the applicable legislation while, at the same time, access to these documents presupposes possession of an AFM, which creates a vicious circle.

3. Conditions of detention, including provision of healthcare services

Administrative detention conditions in Lesvos, including provision of healthcare services

Around 180 single men are currently detained in containers in the Pre-Removal Detention Center of Lesvos (“Lesvos PRDC”), situated inside Moria RIC. Around 2/3 of them are asylum seekers, usually detained under the low profile detention scheme,⁴¹ while the rest are held pending readmission or return to their country under the IOM Assisted Voluntary Return and Reintegration Program (“AVRR”). The number of detainees in each container varies from nine to twelve persons and the size of each cell/container is 47 m². Upon arrival, each detainee receives a clean blanket, but no bedsheets. There is access to running water only from 1pm to 2pm and from 7pm to 8pm. Depending on stock and available donations by humanitarian organizations, they either receive an insufficient quantity of hygiene items (e.g. toothpaste, shampoo, washing powder) or no such products at all. Although the detainees are required to clean the containers themselves, they are not provided with the necessary cleaning products. Furthermore, blankets are never changed and the detainees are not provided with a clean change of clothes or any shoes during the period of their detention. The food is of poor quality and quantity. During summer, with temperatures in Lesvos reaching up to 40 °C, the heat is suffocating inside the metal containers, which are also not properly ventilated. There is no air-conditioning or fans, while yard time is only 30 minutes in the morning and 30 minutes in the evening. The detainees have access to their cellphones only during the weekend, which makes communication with lawyers and outside organizations

⁴¹ HIAS Greece, ‘Locked up without rights: Nationality-based detention in the Moria refugee camp’, December 2019, available at https://www.hias.org/sites/default/files/report_on_low_profile_detention_in_greece_hias_dec_2019.pdf

particularly difficult. While they are allowed to use the payphones of the detention center, they cannot afford the calling cards, and there is no commissary in Lesvos PRDC where they could purchase such cards. Additionally, there are no interpretation services in the PRDC, which makes communication between guards and detainees impossible.

As of approximately March 2018, the provision of medical services in Lesvos PRDC has been entrusted to “AEMY SA” (in English: “Health Units SA”), a legal entity of private law in the form of a “Societe Anonyme”, the Greek State being its sole shareholder.⁴² From the beginning of its operation, AEMY’s medical team had consisted of only one psychologist and one social worker, while the latter resigned in April 2019. AEMY had been operating without interpretation services, with the exception of an interpreter in Arabic between September 2018 and January 2019. AEMY only contracted an interpreter in Arabic and French approximately one month ago. There is no presence of AEMY staff at the PRDC during the weekends. Therefore, serious medical conditions often go unnoticed, while, at the same time, there are numerous reports of suicide attempts. In September 2019, many detainees reported an outbreak of scabies in Lesvos PRDC.

The inadequacy of the medical services provided in the PRDC has been dramatically illustrated in the case of a 38-year-old man from DRC, suffering from kidney failure (end-stage renal disease). On 24 May 2019, he was detained upon arrival under the low profile detention scheme. His condition was not diagnosed at the stage of his initial medical screening and vulnerability assessment at RIC. Despite the asylum seeker’s daily and repetitive attempts to explain his medical condition to AEMY and the police authorities, he was never referred to either EODY (the National Public Health Organization providing medical services in Moria RIC) or Vostaneio Hospital. On 31 May 2019, the Police Directorate issued a release order. However, on 1 June 2019 and, while still in the PRDC, the asylum seeker lost consciousness and was urgently transferred to the Hospital, where he was hospitalized in a critical condition for six days. He was eventually diagnosed with kidney failure and was prescribed hemodialysis every three days.⁴³

Likewise, on 6 January 2020, a 31-year-old man from Iran committed suicide in Lesvos PRDC. He had been detained since 18 December 2019 pending his return to his country of origin under the IOM AVRR program. The only psychologist of PRDC had been on leave since 19 December 2019 and no arrangements had been made for staff replacement.⁴⁴

As of January 2020, the legal aid organizations on the island of Lesvos have documented the use of Police stations for the prolonged administrative detention of asylum seekers.⁴⁵

⁴² <http://www.aemy.gr/en/>

⁴³ Details on file with the author.

⁴⁴ Details on file with the author.

⁴⁵ See Annex, p. 14

Lack of an effective remedy to complain about the conditions of detention

In its last meeting, the Committee of Ministers noted that “domestic case-law has evolved to allow irregular migrants, including unaccompanied minors, to complain about their conditions of detention” and decided to close the supervision of this issue.⁴⁶ However, it should be noted that the Administrative Court of Mytilene did not address the detainees’ complaint that the conditions in Lesvos PRDC amount to inhuman and degrading treatment in any of the 17 cases represented by HIAS Greece between October 2017 and October 2019.

Detention conditions during the suspension of access to asylum procedures in March 2020

The approximately 500 asylum seekers who arrived to the island of Lesvos during the first days of March 2020 were immediately held within Mytilene Port pending deportation pursuant to the Emergency Legislative Order suspending access to asylum (see above). A few days later, they were taken to “Rhodes” Hellenic Navy vessel, at Mytilene harbour, for at least 10 days, before being transferred to detention camps in the mainland. To be noted that, amongst the warship detainees, there were many unaccompanied children, elderly persons, women at an advanced stage of pregnancy and persons with serious medical issues. Illustratively, HIAS Greece has been representing the case of a woman in need of dialysis and one woman whose four-year-old child drowned in the sea after their boat capsized off the island of Lesvos.⁴⁷

The detention conditions in the warship amounted to inhuman and degrading treatment: initially there were only three chemical toilets in Mytilene Port for all the detainees, while five more were added after a week. The toilets were rarely cleaned, and the detainees could only use them upon authorization and under escort by a police officer. Likewise, there was no access to showers or running water. Despite the COVID-19 pandemic, the detainees were never provided with masks or hygiene products, including soaps and hand sanitizers. There were no sanitary pads for the women. People were sleeping on the floor, without any blankets, one on top of the other, whereas there were no divisions for unaccompanied children, women and families. Due to the overcrowding, it was impossible to respect social distancing measures. The food portions were insufficient and there was very limited access to drinking water. At the same time, there was no adequate ventilation nor natural lighting or electricity. No medical services were provided on board and transfers to the hospital were limited to the most urgent cases and only after repeated requests by the persons concerned. Finally, due to the lack of electricity, the detainees could

⁴⁶CM/Del/Dec(2019)1348/H46-9, 6 June 2019

⁴⁷Independent, ‘Coastguard seen apparently trying to capsize boat full of refugees before attacking them with stick, as child drowns off coast’, 2 March 2020, available at:

<https://www.independent.co.uk/news/world/europe/migrant-child-killed-greek-coast-lesbos-syria-refugee-deaths-a9369826.html> and Ekathimerini, ‘Child dies as migrant boat capsizes off Lesvos’, 2 March 2020 available at: <https://www.ekathimerini.com/250107/article/ekathimerini/news/child-dies-as-migrant-boat-capsizes-off-lesvos>

not charge their phones and there was no public phone to communicate with their relatives or lawyers. On 14 March 2020, the majority of the “Rhodes” detainees were transferred to the Malakasa detention camp in the mainland. However, a group of approximately 50 persons was left behind in Mytilene port until 20 March 2020. These persons spent the first days sleeping rough on the concrete floor of the port until they were detained inside an overcrowded bus in Mytilene port. On March 20th, they were transferred to detention camps in the mainland as well.

4. Reception and protection of unaccompanied minors

Unaccompanied minors continue to be systematically registered as adults during the registration and identification procedures, despite their statements to the contrary and in disregard for the principle of presumption of minority. Several complaints against this practice have been filed by civil society organizations both with the Greek Ombudsman for the rights of the Child and with the Fundamental Rights Office of FRONTEX. Likewise, Lesvos RAO refuses to take into account identity documents from the children’s country of origin, which support their claim that they are underage, on the basis that it cannot be confirmed that these are original. At the same time, age assessment procedures are carried out with significant delays and, often, in contravention of the legal framework on age assessment.⁴⁸ This results in the unaccompanied minors’ long-term stay in inhuman and degrading living conditions within Moria RIC and at the adjacent Olive Grove.

III. RECOMMENDATIONS TO THE COMMITTEE OF MINISTERS

In view of the aforementioned findings, HIAS Greece calls on the Committee of Ministers to recommend that the Greek Government adopt the following measures, in relation to asylum seekers **at Lesvos Hotspot**:

Asylum procedure and absence of an effective remedy against expulsion

- Ensure chronological and vulnerability-based prioritisation in the processing of asylum applications.
- Ensure the medical screening and vulnerability assessment is completed prior to the conduct of the asylum interview.

⁴⁸ European Council on Refugees and Exiles, ‘Asylum Information Database, National Country Report: Greece’, 23 June 2020, p.112, available at: <https://www.asylumineurope.org/reports/country/greece>

- Ensure that applicants are provided with reasonable time to seek legal assistance and prepare for their interview.
- Guarantee access to free legal aid and suspend the serving of negative decisions until such access can be provided.
- Extend the deadlines for the submission of an appeal to ensure access to free legal aid and to the complete administrative file of the appellants, including the audio recording of the asylum interview.
- Ensure decisions on asylum applications, both on admissibility and on merits, contain individualised reasoning in fact and law, with reference to the personal circumstances of the applicants.
- Serve asylum decisions on the day of the renewal of the asylum applicant's card to ensure the actual notification of the decision to the applicants.
- Remove unnecessary and excessive administrative requirements at the appeal stage, such as the obligation to provide an attestation of "personal appearance" to the Appeals Authority for the appeal not to be rejected as manifestly unfounded.
- End the punitive application of the provisions on "implicit withdrawal" of the asylum applications, as they disproportionately deprive asylum seekers of an "effective remedy against expulsion".
- Ensure the registration and processing of the asylum applications of all March 2020 arrivals and provide redress for the human rights violations committed during the period of suspension of the access to asylum.
- Ensure that individuals alleging to have been tortured are referred to an independent medical examination free of charge and that their asylum applications are not rejected without first obtaining an expert report on the matter.
- Ensure asylum caseworkers and interpreters are sensitized on issues relating to sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC) and that they receive specialised training on the appropriate assessment of SOGIESC asylum claims.

Living conditions of asylum seekers

- End the policy of the geographical restrictions of asylum seekers on the Greek island "hotspots" and ensure that they are promptly transferred to dignified reception conditions in mainland Greece, as also urged by the Greek National Commission for Human Rights (http://www.nchr.gr/images/English_Site/PROSYFGES/GNCHR%20Announcement%20on%20Asylum%20Developments.pdf) and the Commissioner for Human Rights of the Council of Europe (<https://www.coe.int/en/web/commissioner/-/greece-must-urgently-transfer-asylum-seekers-from-the-aegean-islands-and-improve-living-conditions-in-reception-facilities>). The measure of geographical restriction inevitably leads to overpopulation in the camps and, therefore, to

abhorrent and unsafe reception conditions, which are exacerbated by the already limited resources of the Greek islands.

- Ensure dignified accommodation for asylum seekers and recognized refugees, including by increasing the current accommodation capacity.
- Recognize LGBTIQ+ individuals as vulnerable persons in need of special reception conditions.
- Ensure conditions of quarantine are “fully respectful of the dignity, human rights and fundamental freedoms of persons”, in accordance with the 19 March 2020 “Considerations for quarantine of individuals in the context of containment for coronavirus disease (COVID-19)” of the World Health Organization ([https://www.who.int/publications/i/item/considerations-for-quarantine-of-individuals-in-the-context-of-containment-for-coronavirus-disease-\(covid-19\)](https://www.who.int/publications/i/item/considerations-for-quarantine-of-individuals-in-the-context-of-containment-for-coronavirus-disease-(covid-19)))
- Ensure asylum seekers’ and refugees’ unhindered access to social rights and benefits.

Conditions of detention, including provision of healthcare services

- Ensure the permanent presence of at least one doctor and one nurse at Lesvos PRDC at all times, including during weekends and holidays, in accordance with the recommendations of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) of the Council of Europe, following its visit to Greece in April 2018.
- Abstain from detaining third country nationals in Lesvos PRDC until the authorities are able to ensure conditions of detention, including access to healthcare, which comply with the standards set forth in the European Convention on Human Rights.
- Abolish the detention of third country nationals in police stations which remain “totally inadequate for stays exceeding 24 hours”, as confirmed by CPT during its 2018 visit.
- Ensure that judges examine the conditions of detention in the context of a legal remedy against detention.

Reception and protection of unaccompanied minors

- Ensure that asylum seekers who claim that they are minors are registered and treated as such. If doubts remain, ensure that all such applicants are promptly referred to age assessment procedures and that they benefit from the principle of presumption of minority until the completion of said procedures. To ensure transparency and accountability in this process, provide that the registration and identification interviews at the level of RIC be audio-recorded.
- Ensure that age assessment procedures are carried out in a prompt and child-friendly manner, and in compliance with the applicable legal framework.
- Ensure that documents furnished by asylum seekers claiming to be minors are considered to be genuine unless there is proof to the contrary, in accordance with the *Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families* and *No. 23 (2017) of the Committee on the Rights of the Child on State obligations*

regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return.

- Ensure the immediate placement of unaccompanied minors in suitable accommodation.

OBSERVATIONS ON THE IMPLEMENTATION OF LAW 4636/2019 “ON INTERNATIONAL PROTECTION AND OTHER PROVISIONS” AT THE “HOTSPOT” OF LESVOS

May 2020



**LEGAL
CENTRE
LESVOS**



I. INTRODUCTION

This Joint Briefing Paper is a summary of the complaint submitted to the Greek Ombudsman in March 2020, by the free legal aid organisations HIAS Greece, Refugee Support Aegean [RSA], Greek Council for Refugees, DIOTIMA, Legal Centre Lesvos, European Lawyers in Lesvos [ELIL], FENIX Humanitarian Legal Aid and PRAKSIS, which operate in Lesvos and are members of the Lesvos Legal Aid Working Group. The Joint Briefing Paper offers an overview of the main legal issues which have arisen during the first three months of implementation of the new Law No. 4636/2019 “On International Protection and other provisions” at the “hotspot” of Lesvos.¹

In particular, the aforementioned organisations have observed that, between January and March 2020, the implementation of the new Law has resulted in: 1. the violation of the obligation to provide material reception conditions, 2. the prioritization and accelerated processing of asylum applicants arriving to the island in 2020, at the expense of earlier arrivals, and the ensuing violation of procedural guarantees, 3. the impossibility to physically access Lesvos Regional Asylum Office’s premises and the authorities’ incapacity to manage the increased workload due to the overpopulation, 4. the violation of the principle of family unity and of the right to family reunification, 5. the violation of the special procedural guarantees for unaccompanied minors and of the principle of the Best Interests of the Child, 6. the abusive application of the new Law’s provisions on the implicit withdrawal of asylum applications, 7. the violation of the right to an effective remedy, 8. the systematic and illegal practice of fictitious notification of negative decisions, 9. the violation of procedural guarantees in readmission procedures, 10. the arbitrary detention of asylum seekers and, 11. excessive procedural obstacles in terms of access to legal representation.

In particular:

¹ In the course of the drafting of this Joint Briefing Paper, a series of critical legal developments took place in relation to the access to the asylum procedures (suspension of the submission of asylum applications on the basis of the Emergency Legislative Order of 2 March 2020 – Gov. Gazette A’45 2.3.2020, suspension of the operation of the Asylum Service due to COVID-19 on the basis of the Emergency Legislative Order of 11 March 2020-Gov. Gazette A’ 55/11-03-2020). The documentation of the issues that have arisen from the aforementioned Emergency Legislative Orders, albeit necessary, is beyond the scope of this Paper.

II. OBSERVATIONS ON THE IMPLEMENTATION OF LAW 4636/2019 ON LESVOS

1. Violation of the obligation to provide material reception conditions

- In the case of vulnerable persons or persons in need of special reception conditions, the measure of geographical restriction on the island of Lesbos can now be lifted only as long as they “cannot be provided with appropriate support”, according to Article 67 of the Law. According to this article, “appropriate support” only refers to asylum procedures and does not encompass living conditions. However, according to *Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection* and *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*, Member States have a duty to provide vulnerable asylum seekers with adequate support, not only in relation to the asylum procedures (“special procedural guarantees”), but also in respect to their living and reception conditions (“special reception conditions”). In any case, it appears that the Regional Asylum Service of Lesbos (‘Lesvos RAO’) has not received clear instructions to date as to the circumstances in which the lifting of geographical restrictions and referral to the regular procedure is possible nor guidelines setting out the procedures to be followed in such cases.
- A typical example is the case of an infant with Down syndrome, also suffering from kidney failure and cryptorchidism. The child entered Greece with his parents in December 2019 and remained in a tent at the Reception and Identification Centre (‘RIC’) of Lesbos until March 2020. In late February 2020, the geographical restriction measure was eventually removed from the child’s asylum applicant’s card (in accordance with Ministerial Decision 1140/2019), which meant that he could travel outside the island for immediate medical treatment of his health condition. The flagging of the child’s case and the intervention of his legal representative had been necessary for the procedure of the lifting of his geographical restriction to start. The Greek authorities completed the procedure with extreme delays due to lack of

instructions on the implementation of the new legislation and poor bureaucratic practices. It should be noted that, by the end of March 2020, the family was still awaiting transfer from the island, despite the child's urgent medical needs.

An equally illustrative case is that of an one-month-old infant who was born to an HIV-positive mother. Therefore, the infant was in need of immediate transfer from Lesbos to a hospital where he could be incubated, undergo special medical examinations and receive appropriate treatment. The First Reception and Identification Service (RIS) of Lesbos lifted the infant's geographical restriction on 6 February 2020. However, the infant and his mother had to wait for a month before being allowed to leave the island. This is because the Asylum Service did not provide the child with an asylum applicant's card without a red stamp [the red stamp signals geographical restrictions] until the date of the renewal of his former one, on 3 March 2020. The infant and his mother had to remain in Moria RIC until the end of March, as transfers to the mainland had been halted due to meningitis cases and subsequent COVID-19 preventive measures, and were, thus, exposed to serious health risks.

Similarly, organizations have documented the case of a pregnant asylum seeker in the ninth month of her pregnancy who was living with her husband and four-year-old child in a tent.

- There are insurmountable obstacles to the transfer of victims of gender-based violence from RIC to safe accommodation either on Lesbos or in the mainland, as RIC's medical personnel asks for a forensic report that proves that they have been victims of gender-based violence.
- Victims of torture cannot be certified as such, as Vostaneio Hospital (the only hospital in Lesbos) does not offer certification services, although Article 61, para. 1 of the new Law provides that victims of torture shall be exclusively and solely certified by public authorities.
- Asylum applicants do not have access to social security insurance because of the authorities' failure to provide them with a ΠΑΑΥΡΑ/ΠΑΑΥΠΑ (Temporary Number of Insurance and Healthcare for Foreigners) as foreseen by Law 4636/2019.

2. Prioritization and accelerated processing of asylum applicants arriving to the island in 2020, at the expense of earlier arrivals, and the ensuing violation of procedural guarantees
 - The prioritized assessment of the applications of asylum seekers who arrived in 2020 led to the “de-prioritisation”, cancellation and postponement of the registration, interview and issuance of decisions of those who arrived before 2020, *i.e.*, prior to the entry into force of the new Law. Accordingly, the interviews of the pre-2020 arrivals are often rescheduled for 2021. As a result, the asylum seekers have to live in inhuman and degrading conditions at RIC for periods that can under no circumstances be considered as “limited periods”, as provided under Ministerial Decision No 1140/2019 on the “Restriction of Movement of Applicants for International Protection”.
 - Lesvos RIC schedules appointments for the registration of the asylum applications by Lesvos RAO based on an “open list of available appointments” without consulting with the Asylum Service and before the completion of the medical examination and vulnerability assessment of the applicants. Therefore, potential vulnerabilities are not identified prior to registration and vulnerable applicants cannot be prioritized, which breaches Article 83, para. 7, section (a) of the new Law. In addition, these appointments are notified to the asylum seekers concerned on a paper stub, without an official document and without informing the Asylum Service, which prevents compliance with article 65 of the new Law (obligation to provide appointments and to appear for registration before Lesvos RAO within 7 days, otherwise the application will be archived).
 - Asylum seekers who arrived in 2020 have their interview date scheduled within one to three days following their arrival to Lesvos. This practice renders their right to legal representation, enshrined in the Law (Articles 39, paras 8 (f) and (g); 69, paras 3 and 71 of the new Law), a “dead letter”. In fact, it appears from their interview transcripts that some asylum seekers could not even respond to the questions of EASO (‘European Asylum Support Office’) caseworkers as to whether they knew on which island or RIC they were.

- Vulnerable asylum seekers must be granted reasonable time to prepare for their asylum interview (Article 77, para. 4 of the new Law). However, this procedural guarantee is not respected, as asylum seekers who arrived in 2020 have their interview scheduled before their medical examination and vulnerability assessment is completed (Articles 39 and 58, para. 2 of the new Law).
 - Asylum seekers who arrived in 2020, *i.e.*, after the new Law came into force, are not provided with an asylum applicant's card.
3. Impossibility to physically access Lesvos RAO's premises and the authorities' incapacity to manage the increased workload due to the overpopulation
- Since December 2019, issues regarding asylum seekers' physical access to Lesvos RAO's premises have significantly increased due to the camp's overcrowding. Asylum seekers have reported that waiting lines in front of Lesvos RAO had grown so long that slots were being sold at prices starting at 20 Euros.
 - Lesvos RAO is unable to respond to its increased workload. In practice, the completion of even the simplest procedures is perpetually postponed to subsequent appointments. We indicatively refer to the inability of Lesvos RAO to respond to the renewal of applicants' cards every 15 days, as required under the new Law, and the ensuing necessary return to cards of monthly validity as provided under the previous framework.
4. Violation of the principle of family unity and of the right to family reunification
- Families which have been created outside the applicants' country of origin are not recognized as such for the purpose of their asylum procedure, pursuant to Article 2, section (i) of the new Law. In some reported cases, it was so even when the wife was pregnant.
 - As mentioned above, the cases of asylum seekers who have arrived prior to the entry into force of the new Law have been "de-prioritized". As a result, asylum seekers

eligible for family reunification (*i.e.*, who could be reunited with a family member in another EU Member State, pursuant to Dublin III Regulation) received appointments for the registration of their application at dates past Greece's three-month time limit to send the "take charge request" to the responsible third country under Dublin III Regulation.

- First instance asylum interviews have been conducted in cases of applicants who were eligible for family reunification. This practice, which contravenes the provisions of Dublin Regulation No. 604/2013, results in legal uncertainty for the applicants. In addition, it creates an unnecessary additional burden for the authorities, which therefore have to process cases falling under the responsibility of other EU Member States.

5. Violation of the special procedural guarantees for unaccompanied minors and of the principle of the Best Interests of the Child

- In violation of the principle of the presumption of minority, unaccompanied children are often registered as adults during their reception and identification procedures, even when they expressly state that they are minors. This is still the case even when the minors submit identification documents proving their age.
- The authorities refuse to receive documents of unaccompanied minors without the intervention of a lawyer.
- Minors are not provided with information regarding the age assessment procedures.
- Significant delays have been observed with regard to the referral of unaccompanied minors to age assessment procedures and, in general, in relation to the completion of the age assessment procedures. This results in the unaccompanied minors' long-term stay in inhuman and degrading living conditions at Moria RIC and at the unofficial camp adjacent to Moria, Elaionas (Olive Grove).
- It has been observed that Lesvos RAO often only refers alleged unaccompanied minors to age assessment procedures upon completion of their asylum interview. In some

cases, applicants are not referred to these procedures at all, although they stated they were minors during their asylum interview.

- Lesvos RAO consistently refuses to correct the personal data of minors, even when the latter furnish documentation proving their age, as Lesvos RAO questions the authenticity of these documents. However, it appears that the Asylum Service does not reject original supporting documents on the ground that they are not original documents, but because it could not be confirmed that they are indeed original. As a result of this practice, unaccompanied minors are not legally recognized as such by the Asylum Service. Lesvos RAO often sends such submitted documents to FRONTEX for the purposes of assessing their authenticity. However, the latter does not provide a written opinion regarding the authenticity or otherwise of the document that it is evaluating. Similarly, the Asylum Service rejects applications to rectify the incorrectly registered age of the alleged minors, without providing a reasoning as to why the accompanying corroborating documents were not taken into consideration. In addition, the Asylum Service recently informed organizations that it had been instructed not to accept any identification documents issued by certain countries, because of allegations of corruption in their administration.
- These practices are all the more problematic as, in view of the continuous postponement of the entry into force of Law 4554/2018 regarding the guardianship of unaccompanied minors, the vast majority of unaccompanied minors are deprived of guardianship, assistance and follow-up of their cases.

6. Abusive application of the new Law's provisions on the implicit withdrawal of asylum applications

- Lesvos RAO has been rejecting applications that it deemed "implicitly withdrawn" on the basis of the asylum seekers' failure to renew their asylum card at the prescribed date. It should be noted, however, that such failure is often owed to both the physical impossibility for asylum seekers to access Lesvos RAO and the authorities' inability to manage their increased workload resulting from the overpopulation (see above).

- Lesvos RAO has also deemed applications to be “implicitly withdrawn” in cases where applicants did not attend their asylum interview, although they had documents issued by public hospitals proving that they were hospitalized on the day of the interview.
- Another worrying practice concerns applicants who had been informed by Lesvos RAO, on the very day of their interview appointment, that their interview would not take place, and they were accordingly not allowed to board the bus that would transport them to the interview venue. These applicants were later served with rejection decisions, according to which their application had been deemed “implicitly withdrawn” on the basis that they did not attend their interview.
- The vast majority of administrative detainees from sub-Saharan countries at the Pre-Removal Detention Centre of Lesvos (‘Lesvos PRDC’) have complained about the pressure they received from EASO Registration Officers to declare that they wish to conduct their asylum interview in a more common language (such as English or French) than their native language. According to these asylum seekers, Registration Officers gave them oral assurances that they would be able to express, during the interview, their potential inability to understand the language in which it was conducted and to raise an objection to this effect (objection against the interpretation). However, the asylum applications of at least three asylum seekers who raised such objections have been rejected on “implicit withdrawal” grounds, due to their alleged non-cooperation with the authorities.
- In most of the aforementioned cases, it is impossible for the applicants to challenge the “implicit withdrawal” decision issued against them because they are unable to prove that they were given contradictory information by the authorities, as Lesvos RAO does not audio-record the registration of asylum applications.
- Applicants who have had their asylum application rejected on “implicit withdrawal” grounds were not granted “reasonable time” to demonstrate that their alleged non-cooperation with the authorities, or failure to attend a personal interview, was due to “circumstances beyond their control” (Article 28 of *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).

7. Violation of the right to an effective remedy

- Lesvos RAO does not provide Registry legal aid (State's scheme for free legal aid at the second instance) in second instance proceedings in violation of Article 71, para. 3 of the new Law. At the same time, asylum seekers whose application for free legal aid from the Registry is still pending, or who were not granted a Registry lawyer do not benefit from the suspension or extension of the deadline to submit their appeal.
- This is all the more problematic because, according to the new Law (Article 93) appellants are required to cite "specific grounds of appeal" for their appeal document to be admissible, which makes legal assistance a necessary precondition. It should also be taken into account that the only lawyer of the Registry of Lawyers of Lesvos RAO has suspended her participation in the Registry.
- Lesvos RAO was initially refusing to receive appeal documents prepared by the applicants themselves. Asylum seekers who did not benefit from free legal aid have attempted to lodge an appeal on their own, but the submitted document was refused because it did not contain specific grounds of appeal and personal details of lawyers/authorised representatives (Article 93 of the new Law). It should however, be noted, that the decision on the admissibility of such an appeal can only be decided by the Appeals Authority.
- Rejected applicants are not provided with "specialised information regarding the reasoning of the decision" that rejects their application for international protection (Article 71, para. 2 of the new Law). This prevents them from providing "grounds of appeal" on their own, without legal aid.
- Whereas Lesvos RAO acknowledges its own inability to provide free legal aid to rejected applicants, it nevertheless refuses to register their oral requests to appeal their rejection decision, even in the form of a rudimentary appeal document.

- The Asylum Service refers rejected applicants to civil society organizations, so the latter can provide them with a standardized appeal form, creating the risk that the applicants be, in practice, deprived of the right to an appeal. In particular, asylum seekers experience significant obstacles in accessing both civil society organizations (see relevant recent incidents of attacks, among others), and Lesvos RAO's premises, which effectively prevents them from filing an appeal within the short deadlines foreseen in the Law.
- To date, the organizations which drafted said standardized appeal forms have provided over 200 copies to rejected asylum seekers. It should, of course, be clarified that this practice constitutes a last resort so that applicants are not fully deprived of the examination of their appeal at the second instance. Under no circumstances can the filing of this standardized appeal be considered as access to an effective remedy, as it does not contain any elaboration of legal arguments in relation to the personal circumstances of each applicant.
- For practical reasons, Lesvos RAO is unable to provide a copy of the audio recording of asylum interviews within the suffocating deadlines for the filing of appeals and supplementary legal statement. This is problematic considering that "the digitally-produced file" constitutes "proof of the interview's content", according to Article 16 (2) of the Regulations governing the operation of the Asylum Service.
- Asylum seekers in administrative detention are unable to communicate their wish to be transferred to Lesvos RAO's premises to file an appeal because the detention authorities do not provide interpreters. They are also unable to draft a rudimentary appeal on their own, as they cannot practically access civil society organisations or even stationery. Furthermore, the detention authorities often object that they do not have sufficient personnel to transfer detainees to Lesvos RAO.
- Rejected applicants whose measure of geographical restrictions has been lifted are required to send to the Appeals Committee a "certificate by the Head of the Reception or Hospitality facility" stating that they indeed resided at said facility "upon the date of the hearing" of their appeal. On the other hand, rejected applicants under the measure

of geographical restrictions are required to send an attestation by the Citizens Service Center ('KEP') or the Police of the region where they are staying, "regarding their personal appearance upon the date of the hearing of their appeal". Pursuant to Article 78, para 3 of the new Law, failure to send these attestations until one day before the hearing results in the appeal being rejected as "manifestly unfounded". It should be noted that no such attestation is being provided by KEP or the Police. After the intervention of free legal aid organizations, KEP agreed to certify the authenticity of the signature on pre-drafted "solemn declarations". According to instructions received by the Appeals Authority, the appellants should declare that they cannot travel to Athens due to the measure of geographical restrictions—although this information is known to the authorities—and reiterate their interest in their appeal being examined. However, it is still unclear to date whether, and to what extent, the Appeals Authorities accept these documents as a "attestation" for the purposes of Article 78, para. 3 of the new Law.

- The contradictory wording of the aforementioned provision results in further legal uncertainty for rejected applicants. Article 78, para. 3 of the new Law provides that the attestation be sent to the Appeals Authority "**up to the date prior to the hearing** of the case", while at the same time certifying the "personal appearance [before KEP or the Police] of the applicants on the date of the hearing of their appeal". As a consequence of this contradictory wording, certain Appeals Committees request that attestations be dated one day prior to the hearing of the case. In any case, the workload at the Mytilene KEP and at the Police Department, as well as the practical difficulties for applicants to access civil society organizations in order to be assisted in the drafting of these solemn declarations, makes the compliance with this requirement virtually impossible.
- Lesvos RAO refers asylum seekers to the Mytilene KEP in order to obtain the aforementioned attestation. The appellants are not, however, informed that these attestations are issued upon submission of a solemn declaration written in Greek and

do not receive any explanations about the required content of these declarations either.

- Lesvos RAO has been misinterpreting the provisions of article 104 of the Law, regarding the non-suspensive effect of an appeal. Specifically, according to the documents accompanying the rejection decisions, which are collectively issued to all asylum seekers in the border procedure, “in the border procedure, where there is legal assistance and interpretation, the filing of an appeal shall not have a suspensive effect (Article 104, para. 3)”. Accordingly, appellants are required to lodge a separate request before the Appeals Authority for leave to remain. It should be noted, however, that Article 104, para. 3 only applies in cases where it has already been ruled that an application falls within the exhaustive list of categories mentioned in Article 104, para. 2, for which no automatic right to remain is provided (*e.g.*, when the application has been rejected as “manifestly unfounded”), and not in all of the cases that have been examined under the border procedure. The purpose of this provision is to ensure that, in the cases mentioned in Article 104, para. 2 and when these occur within the framework of the border procedure, the appellant should, as a minimum, be provided with interpretation and legal assistance so as to submit an application for leave to remain, in view of the already limited guarantees of the border procedure.

8. Systematic and illegal practice of fictitious notification of negative decisions

- Lesvos RAO serves rejection decisions on the Head of RIC instead of the applicants themselves. This practice is provided for under Article 82, para. 5 of the new Law in cases where it has been “ascertained” that the applicant “could not be found”. However, the authorities do not mention in the applicants’ files the steps they took in order to locate them, nor do they justify how they were not able to find them despite their known residence and presence in Lesvos RAO’s own premises every 30 days in order to renew their asylum applicant’s card.
- The blanket practice of fictitious notification of negative decisions is illustrated by Lesvos RAO’s serving of decisions on the Head of RIC, even when it is known to the

authorities that the applicants are accommodated in organization-run apartments. Likewise, Lesvos RAO had scheduled appointments for applicants to receive their decisions but ended up unexpectedly serving them on the Head of RIC two days prior to the scheduled appointments.

- As a result of this practice, applicants are not notified of the negative decision issued against them and they miss the deadline to file an appeal. Subsequently, when they approach Lesvos RAO in order to renew their cards, the authorities detain them for the purposes of readmission on the grounds that the time limit for lodging an appeal has expired.

9. Violation of procedural guarantees in readmission procedures

- Readmissions to Turkey have been carried out before the concerned asylum seekers' applications for annulment of their second instance rejection and for suspension of removal were ruled upon by the competent Courts. It has been observed that the authorities do not respect the exercise of legal remedies, thus violating the right to judicial protection.
- Certain administrative detainees were notified of the rejection of their subsequent application shortly before being transferred to the vessel for the purposes of their readmission to Turkey and were, thus, deprived of the possibility to file an appeal.
- Asylum seekers have been included in the readmission lists and removed therefrom at the very last moment, although the examination of their applications on first or second instance was still pending.

10. Arbitrary detention of asylum seekers

- Asylum seekers in administrative detention do not have access to legal assistance, neither in relation to their asylum procedure nor in order to challenge their detention. It should be noted that administrative detainees are never informed of the grounds of their detention in a language that they understand.

- Detainees at Lesvos PRDC do not have access to medical services. Specifically, the agency providing medical services (AEMY S.A.) has been operating in Lesvos PRDC since the spring of 2018, initially with one psychologist and one social worker, and since April 2019 only with a psychologist. Additionally, since the beginning of its activities, AEMY has been operating without interpreters (with the exception of an interpreter for the Arabic language between September 2018 and January 2019).²
- Female asylum seekers have been placed in administrative detention in various police stations in Lesvos in conditions that are unsuitable for the detention of asylum seekers for significant periods of time. This practice appears to have started in Lesvos on 8 January 2020.
- Asylum seekers have been placed in administrative detention for reasons of “public order” without being served with a reasoned decision. In addition, such a ground for administrative detention contravenes the case-law of the European Court of Human Rights according to which administrative detention is non-punitive by nature.

11. Excessive procedural obstacles in terms of access to legal representation

- According to Article 71, para. 1 of the new Law, for a lawyer’s power of attorney to be valid, the authenticity of the asylum seeker’s signature has to be certified by a public authority. However, the notification of a rejection decision terminates, *ipso jure*, the validity of the applicant’s asylum card. As a result, asylum seekers are unable to access legal representation at second instance, and lawyers are unable to receive copies of their clients’ file. This is because rejected applicants can no longer grant authorization for a lawyer to represent them, as KEP will not certify their signature of a power of attorney without a valid asylum card. Likewise, the Police Department refuses to certify their signature, although it has access to the applicant’s personal data. The same problem occurs in relation to legal support in cases of subsequent applications for

² HIAS, ‘LOCKED UP WITHOUT RIGHTS Nationality-based detention in the Moria refugee camp’, December 2019, Available here: https://www.hias.org/sites/default/files/report_on_low_profile_detention_in_greece_hias_dec_2019.pdf

international protection, as no applicant's card is provided to the asylum seekers until their application is found admissible. Furthermore, it has been observed that Lesvos RAO does not issue asylum applicant's cards to persons who arrived after the entry into force of the new Law.

- In numerous cases, lawyers who were present at the asylum interview or appeal hearing of their client have nevertheless been asked to provide a power of attorney with a certified signature, although their client had already instructed them orally before the respective authorities, which is sufficient under domestic legislation.
- It is also worth mentioning that Lesvos RAO has already requested the replacement of all the powers of attorney which had been submitted by lawyers prior to the entry into force of the new Law with authorisations that bear the certification of the authenticity of their clients' signature.
- It is also highly problematic that lawyers can acquire *ipso jure* the legal representation of an asylum seeker, without the possibility to withdraw from it, simply by the effect of the latter's "written statement bearing a signature the authenticity of which has been certified by a public authority" (Article 71, para. 7 of the new Law). This affects the very essence of the legal profession, as it dispenses with the lawyers' right to withdraw from representing a client (Article 142, para. 3 of the Civil Procedure Code). In addition, the asylum seeker who has authorized a lawyer is effectively deprived of the possibility to revoke said authorization because of the burdensome procedure to do so. In this respect, the parallel demand by Lesvos RAO to update the written power of attorney every six months seems paradoxical.

III. CONCLUSION

The authorities are required to implement a legislation which has been poorly formulated and contains plenty of errors. The new Law has introduced a series of excessive obligations which place a disproportionate burden on asylum seekers. At the same time, it failed to organize the way in which the administrative apparatus is expected to manage the increased workload resulting from its implementation. Consequently, the authorities are unable to promptly and

effectively enable applicants to complete the burdensome procedures introduced by the new Law. In fact, the competent authorities are yet to receive clear and comprehensive guidance regarding the implementation of the new legislation.

Already in the first months following the entry into force of the new Law, asylum seekers have had their basic rights and procedural guarantees violated, while they suffered from the further deterioration of the already inadequate reception and identification procedures in the hotspot. The newly implemented system has placed undue obstacles on asylum seekers' access to each step of the asylum procedure, resulting in their eventual exclusion therefrom, while the authorities have consistently failed to provide them with the minimum substantive and procedural guarantees. Asylum seekers are *de facto* impeded from exercising their rights, including that of an effective remedy, which gives rise to potential breaches of the principle of non-refoulement. In addition, the new Law unavoidably leads to violations of the principle of family unity and of the best interest of the child, as well as to practices of arbitrary administrative detention and readmission.

As it transpires from the above analysis, the implementation of the new Law not only places additional administrative burden on an already overwhelmed Administration, but also leads to practices that contravene European and international law and expose Greece to convictions by European and international Courts and bodies.