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Meeting: 1383<sup>rd</sup> meeting (29 September - 1 October 2020) (DH)

Communication from an NGO (Greek Council for Refugees) (31/07/2020) concerning the cases of M.S.S. v. Belgium and Greece and RAHIMI v. Greece (Applications No. 30696/09, 8687/08) (244 pages).

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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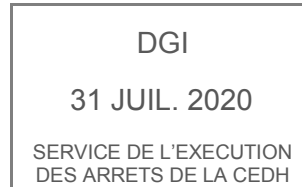
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Réunion : 1383<sup>e</sup> réunion (29 septembre – 1<sup>er</sup> octobre 2020) (DH)

Communication d'une ONG (Greek Council for Refugees) (31/07/2020) 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.

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SUBMISSION OF THE GREEK COUNCIL FOR REFUGEES  
TO THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE  
concerning the groups of cases of M.S.S. v. Greece (Application No. 30696/09) and Rahimi  
v. Greece (8687/08)

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1383rd meeting (29 September - 1 October 2020) (DH)  
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The Greek Council for Refugees (GCR) is a Greek Non-Governmental Organization, founded in 1989, which provides legal assistance and social support to persons in need of international protection in Greece. *Inter alia*, the Greek Council for Refugees has a consultative status in the UN Economic and Social Council (ECOSOC) since 2001 and participates in the Greek National Commission for Human Rights (GNCHR) since 1999.

During the previous years, GCR has communicated to the Committee of Ministers of the Council of Europe a series on selected issues, within the framework of the execution of the ECtHR judgment M.S.S. v. Belgium and Greece (appl. no. 30696/09) according to Art. 9 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

Without underestimating the progress made since the issuance of the M.S.S. judgment in 2011, the Greek asylum and reception system faces new challenges, while a number of systemic and endemic shortcomings persist. In addition, the impact of the successive amendments of national legislation on asylum in November 2019 and May 2020, which have been repeatedly criticized by national and international human rights bodies including the Greek Ombudsman, the Greek National Commission for Human Rights (GNCHR), UNHCR and civil society organizations, as *inter alia* an attempt to lower protection standards and create unwarranted procedural and substantive hurdles for people seeking international protection, should be also assessed to this regard.

Pursuant to Art 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, with the present submission, GCR would like to provide to the Committee of Minister information and analysis on selected issues regarding the legal framework currently in force and the situation that asylum applicants face in practice, with a view to assisting the latter in its evaluation of the execution of the *M.S.S. group and Rahimi judgment*. Information provided with the present submission is based on the updated AIDA report on Greece (2019), drafted by the Greek Council for Refugees (annexed) and other sources where mentioned.



## I. Asylum Procedures

**Access to the Asylum Procedure:**<sup>1</sup> Limited access to the asylum procedure in the mainland remains a systemic and longstanding problem of the Greek asylum system. Without underestimating the number of applications lodged in 2019 (77,287), access to asylum on the mainland continues to be problematic mainly due to difficulties in accessing the Skype-based appointment system in place for registration, which has limited capacity and availability for interpretation. About 3,000 applications remaining unregistered of persons willing to submit an asylum application solely in mainland accommodation sites at the end of 2019.<sup>2</sup> Access to the asylum procedure for persons detained in pre-removal facilities is also a matter of concern. On many occasions during the previous period, GCR has found third-country nationals, including persons belonging to vulnerable groups, detained on the basis of a removal order issued due to ‘lack of legal documentation’, who argued that, despite multiple efforts, they did not manage to gain access to the asylum procedure through Skype.

In March 2020, the Greek Authorities issued an Emergency Legislative Order (*Πράξη Νομοθετικού Περιεχομένου/ΠΝΠ*) which suspended access to the asylum procedure for persons entering irregularly in the country during March 2020 and thus access to asylum was restricted by law for newly arrived potential applicants during March 2020. As stated by UNHCR “[n]either the 1951 Convention Relating to the Status of Refugees nor EU refugee law provides any legal basis for the suspension of the reception of asylum applications”.<sup>3</sup> Moreover, between 13 March 2020 and 15 May 2020, within the framework of Covid-19 prevention measures, the Greek Asylum Service suspended the reception of public and a number of its services, including the registration of new asylum applications. In this regard it should be mentioned that according to the Guidance of the EU Commission on the implementation of relevant EU provisions in the area of asylum during the COVID 19 prevention measures, “even if there are delays, the third country nationals who apply for international protection must have their application registered by the authorities and be able to lodge them”.<sup>4</sup> Since the start of June 2020 and following the resumption of the operation of the Asylum Service, an electronic system for the full self-registration of the asylum applications has been launched by the Asylum Service. However, the system does not address the endemic and longstanding lack of access to the asylum procedure on the mainland, which requires a prior appointment through Skype, as the system of self-registration is available only for applicants who have already

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<sup>1</sup> AIDA Report on Greece, Update 2019, June 2020, available at: <https://bit.ly/2DCpe4W>, pp. 49-50.

<sup>2</sup> IOM, Supporting the Greek Authorities in Managing the National Reception System for Asylum Seekers and Vulnerable Migrants (SMS), Factsheets, December 2019, available at: <https://bit.ly/30hCyVv>, p.3.

<sup>3</sup> UNHCR, UNHCR statement on the situation at the Turkey-EU border, 2 March 2020, available at: <https://bit.ly/2Q62sWN>.

<sup>4</sup> Communication from the Commission, COVID-19: Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement, 17 April 2020, 2020/C 126/02



pre-registered their application through Skype or while remaining in a Reception and identification facility or in administrative detention.<sup>5</sup>

**Pushbacks:**<sup>6</sup> Following an increasing number of cases of alleged pushbacks at the Greek-Turkish border of Evros during the previous years, allegations of pushbacks were systematically reported during the previous period and significantly intensified within 2020. Moreover, recent allegations refer to routine pushback incidents in Evros but also at the Aegean Sea. The persistent allegations of summary returns (pushbacks) have been decried *inter alia* by the Commissioner for Human Rights of the Council of Europe,<sup>7</sup> UNHCR, IOM,<sup>8</sup> UN CAT,<sup>9</sup> UN Working Group on Arbitrary Detention<sup>10</sup> and the Greek National Commission on Human Rights (GNCHR).<sup>11</sup> In June 2020, UNHCR urged Greece “to investigate multiple reports of pushbacks by Greek authorities at the country’s sea and land borders, possibly returning migrants and asylum seekers to Turkey after they had reached Greek territory or territorial waters”. As noted by the UN Refugee Agency “UNHCR has continuously addressed its concerns with the Greek government and has called for urgent inquiries into a series of alleged incidents reported in media, many of which corroborated by non-governmental organizations and direct testimonies. Such allegations have increased since March and reports indicate that several groups of people may have been summarily returned after reaching Greek territory”.<sup>12</sup>

Greek Authorities consistently deny these allegations as “fake news”.<sup>13</sup> No proper official investigation has been launched with regards to the increasing number of such allegations, as far as GCR is aware, despite the fact that as stated for example by EU Commissioner Johansson before the LIBE Committee of the EU Parliament, allegations of violence against asylum-seekers must be investigated, not only in Greece, but all across the EU. “We cannot protect our borders by violating people’s rights”, she noted.<sup>14</sup> Three complaints which have been filed before the Public Prosecutor by GCR in June 2019,

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<sup>5</sup> Asylum Service, Electronic Self-Registration for Asylum Applicants, 10 June 2020, available at: <http://asylo.gov.gr/en/?p=5562>.

<sup>6</sup> AIDA Report on Greece, Update 2019, p. 33-36.

<sup>7</sup> Council of Europe, Commissioner for Human Rights, Time to immediately act and to address humanitarian and protection needs of people trapped between Turkey and Greece, 3 March 2020, available at: <https://bit.ly/39Hm0sd>.

<sup>8</sup> IOM, IOM Alarmed over Reports of Pushbacks from Greece at EU Border with Turkey, 11 June 2020, available at: <https://bit.ly/38Z2szT>.

<sup>9</sup> UN Committee Against Torture, Concluding Observations on the seventh periodic report of Greece, 3 September 2019, CAT/C/GRC/CO/7, available at: <https://bit.ly/2wKiqPm>.

<sup>10</sup> Working Group on Arbitrary Detention: Preliminary Findings from its visit to Greece (2 - 13 December 2019), available at: <https://bit.ly/38HPAfV>

<sup>11</sup> GNCHR, Statement with regards the alleged practices of push-backs, 7 July 2020, available at: <https://bit.ly/3fxzNEu> (in Greek).

<sup>12</sup> UNHCR, UNHCR calls on Greece to investigate pushbacks at sea and land borders with Turkey, 12 June 2020, available at: <https://bit.ly/2OtGtaN>.

<sup>13</sup> European Parliament: News, Investigate alleged pushbacks of asylum-seekers at the Greek-Turkish border, MEPs demand, 6 July 2020, available at: <https://bit.ly/3exAs7N>.

<sup>14</sup> *Ibid.*



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concerning three separate incidents of alleged pushbacks during the period April-June 2019, involving 5 Turkish citizens, including one child are still pending and have not come to an end by the time of writing, despite *inter alia* the recommendation of the UN CAT to “enhance efforts to ensure the criminal accountability of perpetrators of acts that put the lives and safety of migrants and asylum seekers at risk”.<sup>15</sup>

**Capacity of the Asylum Service and duration of the procedure:**<sup>16</sup> The capacity of the Asylum Service should be assessed by taking into consideration the fact that:

- i) the number of persons that arrived in Greece in 2019 (74,613 new arrivals) was increased by 48% compared to 2018;
- ii) the majority of newly arrived persons originated from Afghanistan (40%), Syria (27.4%) and DRC (6.7%), i.e. persons originating from countries that are included in the top 10 list of international displacement situations by country of origin,<sup>17</sup>
- iii) the Asylum Service received 15.4% more applications in 2019 compared to 2018 (77,287 asylum applications) and
- iv) in 2019 Greece received more arrivals than the combined arrivals of Spain, Italy, Malta and Cyprus (49,100). The significant drop in the number of arrivals since the second half of March 2020, which coincides in time with the outspread of the Covid-19 pandemic in Europe, should be further assessed as to whether it indicates a change in trends with more permanent characteristics.<sup>18</sup>

Despite the large number of first instance decisions issued during the period that the Asylum Service had suspended the reception of the public due to Covid-19 measures (6,904 first instance Decision in March 2020, 15,853 in April 2020 and 6,264 in May 2020)<sup>19</sup>, as of May 2020 the number of pending applications at first instance was 99,936<sup>20</sup> (87,461 at the end of 2019). The average processing time at first instance was reported at about 10.3 months in 2019, compared to 8.5 months in 2018.<sup>21</sup> Out of the total number of 87,461 applications that were pending at the end of 2019, the personal interview had not yet taken place in 71,396 (81.6%) cases. Out of these 71,396 pending applications, in the majority of cases (67% or 47,877 applications) the interview has been scheduled for the second semester of 2020 and even far beyond 2020, with some applicants having their interview scheduled for 2024.<sup>22</sup> In this regard, the second instance procedure and judicial review should also be taken into consideration when examining processing times. Yet in any event, given the successive legislative amendments on asylum law in the previous period, which were *inter alia* brought forth with a view to accelerate the asylum

<sup>15</sup> UN Committee Against Torture, *ibid*.

<sup>16</sup> AIDA Report on Greece, Update 2019, pp. 18, 54-55.

<sup>17</sup> UNCHR, Global Trends, Forced Displacement in 2019, available at: <https://bit.ly/305YNw0>, p. 8.

<sup>18</sup> See UNHCR, Sea Arrivals Dashboard, April 2020, available at: <https://bit.ly/3fFUw9g>; UNHCR, Factsheet: Greece, 1-31 May 2020, available at: <https://bit.ly/30wOC5R>.

<sup>19</sup> Ministry of Migration and Asylum, Monthly Newsletter, May 2020, available at: <https://bit.ly/3h0XrJV>.

<sup>20</sup> *Ibid*.

<sup>21</sup> AIDA Report on Greece, Update 2019, pp. 54-55.

<sup>22</sup> *Ibid*.



procedure, efforts to accelerate the asylum procedure should not be based on the “reduction of safeguards for the sake of speediness” as in order to be in line with international standards, including ECHR, the asylum procedure should be fast but also fair.<sup>23</sup>

**New legislation on Asylum:** National legislation on Asylum has been amended twice during the previous period, initially by L. 4636/2019, which was voted in November 2019 after just four working days of public consultation, and subsequently by L. 4686/2020, voted in May 2020, which modified certain provision of L. 4636/2019. The new framework on International Protection has been repeatedly criticized *inter alia* by the Greek National Commission for Human Rights (GNCHR),<sup>24</sup> Greek Ombudsman,<sup>25</sup> the Union of Administrative Judges,<sup>26</sup> UNHCR,<sup>27</sup> civil society organizations,<sup>28</sup> due to the fact that it significantly reduces safeguards for people seeking international protection, creates additional pressure on the overstretched capacity of administrative and judicial authorities, puts an excessive burden on asylum seekers and focuses on punitive measures. As underlined by the UNHCR “the Law is introducing stringent procedural requirements and formalities which an asylum-seeker should not reasonably be expected to fulfil. This approach may lead to a *de facto* denial of rights as a result of the impossibility to exercise these rights in practice, dropping out from the asylum procedure, a failure to examine international protection needs and a risk of violation of the principle of *non-refoulement* if the person is, ultimately, returned”.<sup>29</sup>

Examples of such procedural requirements include:

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<sup>23</sup> UNHCR, Factsheet: Greece, 1-31 May 2020, available at: <https://bit.ly/3h2qwVw>.

<sup>24</sup> GNCHR, Observation of the GNCHR on the draft Law of the Ministry for Citizen’s Protection on “International protection”, 24 October 2019, available at: <https://bit.ly/3clUBYa> (in Greek).

<sup>25</sup> Greek Ombudsman, Observation on the draft law of the Ministry for Citizen’s Protection, 23 October 2019, available at: <https://bit.ly/2LAXCCH> (in Greek)

<sup>26</sup> Union of Administrative Judges, Note to the Parliament, 30 October 2019, available at: <https://bit.ly/32zThov> (in Greek).

<sup>27</sup> UNHCR, ‘UNHCR urges Greece to strengthen safeguards in draft asylum law’, 24 October 2019, available at: <https://bit.ly/3fXkm9j>; UN High Commissioner for Refugees (UNHCR), UNHCR Comments on the Law on “International Protection and other Provisions” (Greece) , 12 June 2020, available at: <https://www.refworld.org/docid/5ee3590e4.html>.

<sup>28</sup> See *inter alia* GCR, *Observation on the draft law on international protection*, 23 October 2019, available at: <https://bit.ly/3clFluD>; Amnesty International, *Το προτεινόμενο σχέδιο νόμου για το άσυλο υποβαθμίζει την προστασία και τα δικαιώματα των προσφύγων και παραβιάζει τα διεθνή πρότυπα*, 24 October 2019, available at: <https://bit.ly/3dWduqV>; Refugee Support Aegean, *RSA Comments on the International Protection Bill*, 21 October 2019, available at: <https://bit.ly/2LCfJU7>; Actionaid Greece et al, 15 civil society organisations call upon the Government to organise a substantial public consultation prior of voting the draft law on asylum, 31 October 2019, <https://bit.ly/2Zf4tFe>; Amnesty International et al., *Joint press conference regarding the draft law on asylum*, 30 October 2019, available at: <https://bit.ly/3bDUgVr>.

<sup>29</sup> UN High Commissioner for Refugees (UNHCR), UNHCR Comments on the Law on “International Protection and other Provisions” (Greece), p. 2.



- the requirement that asylum applicants can only appoint a lawyer by a document (authority form) bearing their signature certified by a public authority.<sup>30</sup> The certification of the signature of the Applicant can take place by a public authority only on the basis of the Applicant's valid asylum seeker's card. However, in case the Applicant receives a negative decision, the asylum seeker's card is withdrawn and thus the Applicant cannot provide a document bearing a certified signature.
- The obligation of the Applicant to present him/herself before the authorities as a rule at all stages of the procedure.<sup>31</sup> For example, the new law foresees the obligation of the applicant to present him/herself before the Appeals Committees on the day of the examination of the Appeal, even if he/she has not been invited for an oral hearing, on penalty of rejection of their appeal as "manifestly unfounded". The Union of Administrative Judges has underlined that this additional requirement should be considered as a "procedural obstacle".<sup>32</sup>
- The requirement for the Appeal to include specific appeal grounds on penalty of being rejected as inadmissible<sup>33</sup> (see below).
- The possibility to consider an application as manifestly unfounded, as a punitive measure, in case that the Applicant "frankly infringed his/her obligation to comply with the authorities", without any in merits examination and any examination under the non-refoulement principle.<sup>34</sup>
- The possibility of a 'fictitious service' (πλασματική επίδοση) of first instance and second instance decisions. Following the 'fictitious service' the decision is considered as communicated and deadlines for lodging an Appeal or judicial remedies start. This entails the risk for said deadlines to expire without the Applicant having been actually informed about the issuance of the decision.<sup>35</sup> No *force majeure* reasons should be invoked by the Authorities in order for a Decision to be 'fictitiously' serviced.<sup>36</sup> As noted, the provisions relating to this "*fictitious service*" may in practice limit the access of asylum seekers to legal remedies.<sup>37</sup>

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<sup>30</sup> Article 71 (1) L. 4636/2019.

<sup>31</sup> Article 78(3) L. 4636/2019 and Article 97(2) L. 4636/2019, as amended by L. 4686/2020.

<sup>32</sup> Union of Administrative Judges, Note to the Parliament.

<sup>33</sup> Article 93 L. 4636/2019.

<sup>34</sup> Article 88(2-k) L. 4636/2019 as amended by L. 4686/2020.

<sup>35</sup> See *inter alia* GCR & Oxfam, *Diminished, Derogated, Denied: How the right to asylum in Greece is undermined by the lack of EU responsibility sharing*, 2 July 2020, available at: <https://bit.ly/3f6Toub>, p.15.

<sup>36</sup> Article 82(3) L. 4636/2019 as amended by L. 4686/2020; according to said provision the notification of the Decision can take place in person to the applicant or with a registered letter to the applicant, via an e-mail to the applicant, via an electronic platform managed by the Asylum Service, to the lawyer/consultant/representative appointed by the applicant (without any verifications that said persons continue to represent the applicant) or to the Head of the Reception/Accommodation Center.

<sup>37</sup> See *inter alia* Greek Ombudsman, Παρατηρήσεις στο σχέδιο νόμου Προσαρμογή της Ελληνικής Νομοθεσίας προς τις διατάξεις της Οδηγίας 2013/33/ΕΕ (αναδιατύπωση 29.6.13) σχετικά με τις απαιτήσεις για την υποδοχή των αιτούντων διεθνή προστασία κ.ά. διατάξεις, April 2018.



Moreover, the new legislation introduces the possibility for the asylum interview on the admissibility of the application or even on the merits<sup>38</sup> to be conducted by personnel of the Greek Police or the Armed Forces, in “particular emergency circumstances” and under the condition that said personnel has received “(necessary) basic training”.<sup>39</sup> Notwithstanding the issue of whether the “(necessary) basic training” is enough to ensure that said personnel is in a position to properly conduct such interviews, it should be recalled that the establishment of an independent Asylum Service in Greece “staffed by civil servants working outside the Hellenic Police” has been one of the basic commitments taken by the Greek Authorities already since 2012 within the framework of general measures for the execution of the M.S.S. judgement.<sup>40</sup>

**Legal assistance:**<sup>41</sup> No state-funded free legal aid is provided at first instance, nor is there an obligation to provide it in law. Free legal assistance and counselling to asylum seekers at first instance is only provided by a number of civil society organisations. The scope of these services remains severely limited, taking into consideration the number of applicants in Greece and the needs throughout the whole asylum procedure – including registration of the application, first and second instance, judicial review.

A state-funded legal aid scheme in the appeal procedure on the basis of a list managed by the Asylum Service operates since September 2017. Despite this welcome development, the capacity of the second instance legal aid scheme remains limited and compliance of the Greek Authorities with the obligation to provide free legal assistance at the appeals stage should be further assessed.

In 2019, almost 2 out of 3 appellants did not benefit from free legal assistance for the submission of the appeal and during the second instance examination. More precisely, out of a total of 15,378 appeals lodged in 2019, only 5,152 (33%) asylum seekers received free legal assistance under the state-funded legal aid scheme in appeals.<sup>42</sup> More recent data provided by the Authorities corroborate these findings.<sup>43</sup>

Moreover, in some places across the country there is no lawyer operating under the free legal aid scheme or there is a limited number of lawyer(s) not able to address the needs. For example, as of 31 December 2019, there was only one lawyer under the free legal aid

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<sup>38</sup> Within the framework of the fast-track border procedure of Article 90(3) L. 4636/2019.

<sup>39</sup> Article 77(2) and Article 90(3) L. 4636/2019.

<sup>40</sup> See DH - DD(2011)670E, 1120th meeting DH (13-14 September 2011), Communication from Greece in the case of M.S.S. against Belgium and Greece (Application No. 30696/09), Greek Action Plan on Migration Management, available at: <https://bit.ly/3fJc4RU>, p. 41.

<sup>41</sup> AIDA Report on Greece, Update 2019, pp. 68-70.

<sup>42</sup> *Ibid.*

<sup>43</sup> see DH-DD(2020)571, Communication from Greece concerning the groups of cases of M.S.S. v. Greece (Application No. 30696/09) and Rahimi v. Greece (8687/08), 26 June 2020, p. 6; according to these data, out of the total number of Appeals lodged in 2019 and by the end of May 2020 (19,502) a number of 6,760 applicants have been benefited by the free legal aid scheme in Appeals (34%).





scheme operating on the island of Lesbos. At the same time, Lesbos received 22,252 asylum applications in 2019, i.e. the highest number of applications across the different Asylum offices countrywide, which amounts to 28.7% of the total number of applications (77,287) registered in 2019 across the country.<sup>44</sup> No free legal aid lawyer under the state funded scheme was present by the end of 2019 in Samos,<sup>45</sup> i.e. the island with the second largest population of applicants (6,455 at the end of May 2020).<sup>46</sup>

Finally, it should be mentioned that, given the 2019 amendment of the national legislation, and the requirements introduced for lodging and for the examination of a second instance Appeal, the limited provision of free legal assistance in practice poses insurmountable obstacles in accessing second instance procedure (see below).

**Appeal:**<sup>47</sup> Recognition rate in second instance remained low in 2019. Out of the total in-merits second instance decision issued in 2019, the international protection recognition rate was of 5.93%. 6.07 % was the percentage of cases which referred for humanitarian protection and 87.9% were negative. L. 4686/2020, voted in May 2020 has abolished the possibility of referring cases for humanitarian protection.<sup>48</sup>

Effective access to the second instance procedure has been severely restricted in practice by the successive legislative amendments in 2019 and 2020 (L. 4636/2019 and L. 4686/2020). As mentioned above, the new law foresees a procedure of ‘fictitious service’ of a first instance decision, which entails the risk for the appeal deadline to expire without the applicant having been promptly informed about the issuance of a first instance negative decision.<sup>49</sup> In addition, according to the new law, an appeal against a first instance decision *inter alia* should be submitted in a written form (in Greek) and mention the “specific grounds” of the appeal. Otherwise, the appeal is rejected as inadmissible without any in-merits examination.<sup>50</sup> Given the fact that said requisites can only be fulfilled with the assistance of a lawyer, in conjunction with the aforementioned and significant shortcoming in the provision of free legal assistance under the free legal aid scheme, appeals procedures may be practically non-accessible for the vast majority of applicants. As stated by the UNHCR, with regard to said amendments “[i]n some circumstances, it would be so difficult to appeal against a rejection that the right to an effective remedy enshrined in international and EU law, would be seriously compromised”.<sup>51</sup>

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<sup>44</sup> see AIDA, Report on Greece, pp. 28 and 101-102.

<sup>45</sup> *Ibid.*

<sup>46</sup> National Situational Picture Regarding the Islands at Eastern Aegean Sea, available at: <https://bit.ly/2ZD2NW3>.

<sup>47</sup> AIDA Report on Greece, Update 2019, pp. 60-67.

<sup>48</sup> Article 61(e) L. 4686/2020.

<sup>49</sup> Article 82(3) L. 4636/2020 as amended by L. 4686/2020.

<sup>50</sup> Article 93 L. 4636/2019.

<sup>51</sup> UNHCR, ‘UNHCR urges Greece to strengthen safeguards in draft asylum law’.



L. 4636/2019, has also abolished the automatic suspensive effect for certain appeals, in particular those concerning applications rejected in the accelerated procedure or dismissed as inadmissible under certain grounds.<sup>52</sup> As noted by the Greek Ombudsman, “the restriction of the automatic suspensive effect of the Appeal [...] together with the proposed short or even suffocating deadlines, in particular within the framework of the border procedures, and the limited free legal aid in the country entails the risk the right to an effective remedy to be undermined”.<sup>53</sup>

**Fast-track border procedure:**<sup>54</sup> L. 4636/2019 has generalized the application of the fast track border procedure to all applicants arriving on the Greek Eastern Aegean Islands, by abolishing the exception of applicants identified as vulnerable from said fast track procedure, as was provided by the previous legislation.<sup>55</sup> To this regard it should be reminded that, already since 2017, the United Nations Special Rapporteur on the Human Rights of Migrants has stressed that the provisions with regard to the exceptional derogation measures for persons applying for asylum at the border raise “*serious concerns over due process guarantees*”.<sup>56</sup> L. 4636/2019 provides that applicants in need of special procedural guarantees, can be exempted from said procedure only in case that adequate support cannot be provided within the framework of the fast track border procedure.<sup>57</sup> Moreover, L. 4636/2019 provides that under certain circumstances, applications of unaccompanied minors can also be examined under the fast-track border procedure.<sup>58</sup>

Within the framework of the fast-track border procedure, since mid-2016, the same template decision is issued to dismiss claims of Syrians applicants as inadmissible on the basis that Turkey is a safe third country for them. Accordingly, negative first instance decisions qualifying Turkey as a safe third country for Syrians are not only identical and repetitive – failing to provide an individualised assessment – but also outdated insofar as

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<sup>52</sup> Article 104 L. 4636/2019.

<sup>53</sup> Greek Ombudsman, Observation on the draft law of the Ministry for Citizen’s Protection, , p. 12

<sup>54</sup> AIDA Report on Greece, Update 2019, pp. 88-102 and 127-134.

<sup>55</sup> Article 90(3) L. 4636/2019; see also Article 60(4) l. 4375/2016.

<sup>56</sup> Human Rights Council, Report of the Special Rapporteur on the human rights of migrants on his mission to Greece, A/HRC/35/25/Add.2, 24 April 2017, available at: <http://bit.ly/2rHF7kl>, para 78; see also FRA, *Update of the 2016 Opinion of the European Union Agency for Fundamental Rights on fundamental rights in the ‘hotspots’ set up in Greece and Italy*, 3/2019, 4 March 2019, p. 7, “[t]he processing of asylum claims in facilities at borders, particularly when these facilities are in relatively remote locations, although per se not unlawful, brings along built-in deficiencies. As almost three years of experience in Greece shows, this approach creates fundamental rights challenges that appear almost unsurmountable”.

<sup>57</sup> Article 67(3) L. 4636/2019.

<sup>58</sup> According to Article 90(4) L. 4636/2019, applications submitted by UAMs can be examined under the fast track border procedure in case that the minor comes from a country included in the safe country of origin list or a country which can be consider as a safe third country by taking into consideration the best interest of the child; he/she has submitted a subsequent application; he/she is considered as a threat to the public order/national security; or misled the authorities by presenting false documents or has destroyed or disposed of an identity or travel document.



they do not take into account developments after that period. Second instance decisions issued by the Independent Appeals Committees for Syrian applicants systematically uphold the first instance inadmissibility decision, if no vulnerability/reasons for referring the case for humanitarian protection is identified. Thus, the risk of chain-refoulement remains high.

**Judicial Review:**<sup>59</sup> The effectiveness of legal remedies against a second instance negative decision, i.e. Application for annulment (*αίτηση ακύρωσης*) and Application for suspension (*αίτηση αναστολής*) is severely undermined by a number of practical and legal obstacles, intensified by L. 4636/2019. *Inter alia*, L. 4636/2019:

- as mentioned above, foresees the possibility of a ‘fictitious service’ of the second instance decision, which entails the risk for deadlines for judicial review to expire without the appellant having been actually informed about the issuance of the decision,<sup>60</sup>
- reduced the deadline for submitting a remedy against a second instance negative decision from 60 to 30 day since the notification of the decision<sup>61</sup> and
- provides that legal remedies can be solely submitted before the Administrative Court of First Instance of Athens or Thessaloniki,<sup>62</sup> which in practice may render them not accessible for Applicants located in other areas.<sup>63</sup>

Moreover:

- Application for annulment and Application for suspension can only be filled by a lawyer. However, no free legal aid scheme is available.
- Neither the application for annulment, nor the application for suspension have an automatic suspensive effect. Therefore, and contrary to the case law of the ECtHR, between the application of suspension and the decision of the Court, there is no guarantee that the applicant will not be removed from the territory, even in case of an ‘arguable claim’ under article 3 ECHR.
- The Administrative Court can only examine the legality of the decision and not the merits of the case, while the overall procedure is reported lengthy.

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<sup>59</sup> AIDA Report on Greece, Update 2019, pp. 67-68.

<sup>60</sup> Article 82(3) L. 4636/2019 as amended by L. 4686/2020.

<sup>61</sup> Article 109 L. 4636/2019.

<sup>62</sup> Article 115 L. 4636/2019.

<sup>63</sup> Union of Administrative Judges, Note to the Parliament; see also ECHR, *Kaak v. Greece*, Application No 34215/16, 3 October 2019, paras. 119-125. The case concerns a number of applicants remaining on the islands of Chios against whom detention orders have been issued. The competent Administrative Court in order to challenge said orders was located on a different island (Lesvos). The ECtHR by taking into consideration inter alia that little or no legal assistance had been provided to the applicants, that information provided was vague and the fact that the competent domestic Court was located on another island, found that the applicants did not had access in practice to a legal remedy, even assuming that said remedy was effective.



## II. Living conditions of asylum seekers

**Reception Capacity:**<sup>64</sup> The number of reception places for asylum applicants in Greece has increased since 2016, mainly through temporary camps and the UNHCR accommodation scheme. Despite these efforts, destitution and homelessness remain a risk. As noted by the UNHCR (April 2020) “[h]ousing options and services to cater for the present population remained limited countrywide”.<sup>65</sup> To this end, the recently announced intention of the authorities to reduce the number of the reception facilities (April 2020-June 2020),<sup>66</sup> should be further assessed as to the impact it will have on the available reception capacity countrywide.

Homelessness and destitution remain a risk even for persons already identified as vulnerable. For example, as of May 2020, out of the almost 4,900 unaccompanied and separated children in Greece, only one in four has a place in an appropriate shelter.<sup>67</sup> As noted in January 2020, the number of homeless sexual gender-based violence (SGBV) survivors has increased in urban areas in the last six months of 2019, resulting in their successive exposure to risks of violence and destitution. As found by a specialized NGO report, out of the 134 SGBV survivors who had benefited from its services between June and November 2019, 73% were homeless. 37% of homeless women reported that they have been subject to one or more SGBV incidents, directly related with their homelessness.<sup>68</sup>

The capacity of the mainland camps, initially created as emergency accommodation facilities, was 26,652 as of May 2020, with an additional capacity of 4,406 emergency places. The total number of applicants in these camps was of 28,089 as of May 2020.<sup>69</sup> Moreover, 22,769 people were accommodated under the ESTIA accommodation scheme as of the end of May 2020, of whom 16,189 were asylum applicants. The occupancy rate of the scheme was of 98,3%.<sup>70</sup>

On the Eastern Aegean islands, the nominal capacity of the Reception and Identification Centers (RICs) was of 6,095 places as of 15 July 2020, while a total of 32,247 newly arrived

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<sup>64</sup> AIDA Report on Greece, Update 2019, pp. 148-153.

<sup>65</sup> UNHCR, Factsheet, Greece: 1-30 April 2020, available at: <https://bit.ly/2ZzvS4C>.

<sup>66</sup> *Inter alia* Naftemporiki.gr, Ν. Μηταράκης: Μείωση των δομών από 93 σε 38 το 2020 Σάββατο, 25 April 2020, available at: <https://bit.ly/2Cl4r5T> (in Greek); Euronews, Στόχος να κλείσουν άμεσα 60 δομές φιλοξενίας προσφύγων και μεταναστών, 9 June 2020, available at: <https://bit.ly/2CUuRuR> (in Greek).

<sup>67</sup> UNHCR, Factsheet: Greece, 1-30 May 2020, available at: <https://bit.ly/3h1AhDk>.

<sup>68</sup> UNHCR, Factsheet, Greece: 1-31 January 2020, available at: <https://bit.ly/2V6beGR>; Diotima, Άστεγες πολλές προσφύγισες – θύματα έμφυλης βίας, 16 January 2020, available at: <https://bit.ly/2y9PmBI> (in Greek).

<sup>69</sup> IOM, Supporting the Greek Authorities in Managing the National Reception System for Asylum Seekers and Vulnerable Migrants (SMS), Factsheets, 2020, available at: <https://bit.ly/39gZZkJ>.

<sup>70</sup> UNHCR, Accommodation update, May 2020, available at: <https://bit.ly/3eCg05H>.



persons remained there under a geographical restriction.<sup>71</sup>

Overall, the capacity of the reception system in Greece should be assessed against the total number of persons with pending asylum applications remaining in Greece, i.e. 87,461 applications pending at first instance and about 14,547 appeals pending before different Appeals Committees, at the end of 2019.

**Reception conditions:**<sup>72</sup> Despite the decreased number of arrivals in particular since the second half of March 2020 and the ongoing transfers to the mainland, Reception and Identification (RIC) facilities on the islands ('hotspots') remain significantly overcrowded, as the numbers above document. As widely documented, overcrowding coupled with the lack of essential services leads to conditions which do not meet even basic standards and expose applicants to protection risks and violence. As underlined the CoE Commissioner for Human Rights (October 2019) "The situation of migrants, including asylum seekers, in the Greek Aegean islands has dramatically worsened over the past 12 months. [...] The Commissioner is appalled by the unhygienic conditions in which migrants are kept in the islands. It is an explosive situation. There is a desperate lack of medical care and sanitation in the vastly overcrowded camps I have visited. People queue for hours to get food and to go to bathrooms, when these are available. [...] This no longer has anything to do with the reception of asylum seekers. This has become a struggle for survival".<sup>73</sup> On February 2020, the UN High Commissioner for Refugees "called for urgent action to address the increasingly desperate situation of refugees and migrants in reception centres in the Aegean islands". As noted "[c]onditions in facilities on Lesbos, Chios, Samos, Kos and Leros are woefully inadequate, and have continued to deteriorate since Grandi last visited in November [...] 'Conditions on the islands are shocking and shameful'".<sup>74</sup> As reported in May 2020 "reception centres [on the islands] remain overcrowded and poorly serviced".<sup>75</sup>

The impact on reception conditions of the prolonged lockdown on the overcrowded islands RICs within the framework of the Covid-19 prevention measures, should also be assessed. A restriction of movement of applicants remaining at the island RIC facilities inside the perimeter of said facilities has been imposed since 23 March 2020,<sup>76</sup> and since

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<sup>71</sup> National Situational Picture Regarding the Islands at Eastern Aegean Sea, 30 May 2020, available at: <https://bit.ly/2ZD2NW3>

<sup>72</sup> AIDA Report on Greece, Update 2019, pp. 154-164.

<sup>73</sup> Council of Europe, Greece must urgently transfer asylum seekers from the Aegean islands and improve living conditions in reception facilities, 31 October 2019, available at: <https://bit.ly/36SmSb2>.

<sup>74</sup> UNHCR, Act now to alleviate suffering at reception centres on Greek islands, 21 February 2020, <https://bit.ly/3dUhV6u>.

<sup>75</sup> UNHCR, Factsheet: Greece, 1-30 May 2020, available at: <https://bit.ly/3h1AhDk>.

<sup>76</sup> Joint Ministerial Decision No. Δ1α/ΓΠ.οικ. 20030, Gov. Gazette B' 985/22-3-2020; During the period of the lockdown, residents of the island RICs facilities are restricted within the perimeter of the Centre and exit is not allowed with the exception of one representative of each family or group of residents who is allowed to exit the facility (between 7 am and 7 pm) in order to visit the closest urban centre to cover basic needs. No



then has been successively prolonged (at the time of writing up to 2 August 2020, i.e. over 4 months) contrary to the lockdown on the general population which has been ended on 4 May 2020.<sup>77</sup> As underlined by civil society organizations and health experts the prolonged restriction of movement on public health grounds is not justified on any scientific basis,<sup>78</sup> as “[t]here is no evidence that quarantining whole camps effectively limits transmission of SARS-CoV-2 in settings of reception [...], or provides any additional protective effects for the general population”.<sup>79</sup> Moreover, the prolonged lockdown further hinders access of the RICs residents to vital services (health, legal assistance etc.) located outside the facilities.<sup>80</sup> Finally and taking into consideration “a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question”,<sup>81</sup> the legal nature of said measure should be assessed.

On the mainland, even if the capacity in sites has increased, the shortage of accommodation countrywide is increasingly leading to the overcrowding of many mainland camps, creating tension and increasing protection risks for the residents. Moreover, some continue to operate below standards provided under EU and national law, especially for long-term accommodation. Main gaps relate to the remote and isolated location, the type of shelter, lack of security, and limitations in access to social services, especially for persons with specific needs and children.<sup>82</sup>

### III. *Detention of asylum seekers*

**Detention of asylum seekers:**<sup>83</sup> The total number of persons detained at the end of 2019 was 3,869, compared to 2,933 persons detained by the end of 2018. Out of the total number of persons detained at the end of 2019, 2,472 were asylum seekers and 1,021 persons (26.3%) were detained in police stations.

No individual assessment procedure prior to the imposition of detention is in place and detention continues to apply indiscriminately, including against vulnerable applicants –

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more than 100 persons per hour could exit the facility for this purpose if public transport was not available. All visits or activities inside the RICs not related to the accommodation, food provision and medical care of RIC residents, are only permitted following authorization of the RIC management. For the provision of legal services, access shall also be granted following authorization from the RIC management and in a specific area, where this is feasible.

<sup>77</sup> AIDA Report on Greece, Update 2019, pp. 160-162; see also Ministry of Migration and Asylum, Press Release, 19 July 2020, available at: <https://bit.ly/2CoQ54v>.

<sup>78</sup> Actionaid Hellas *et al.*, Public Statement, 17 July 2020, available at: <https://bit.ly/3eOiA8D> (in Greek).

<sup>79</sup> European Centre for Disease Prevention and Control, Guidance on infection prevention and control of COVID-19 in migrant and refugee reception and detention centres in the EU/EEA and the UK, Technical report, 15 June 2020, available at: <https://bit.ly/2Bjxt5b>, p. 1.

<sup>80</sup> Actionaid Hellas *et al.*, Public Statement.

<sup>81</sup> *Inter alia Guzzardi v. Italy*, application no. 7367/76, 6 November 1980, para. 92.

<sup>82</sup> AIDA, Report on Greece, Update 2019, pp. 154-157.

<sup>83</sup> AIDA, Report on Greece, Update 2019, pp. 175-203.



families with children, persons suffering from mental health problems, victims of torture etc.-, while no alternatives to detention are examined or applied in practice. A practice of automatic, upon arrival, detention of certain categories of asylum seekers is reported on Lesbos, Kos and to a certain extent on Leros island, while as far as GCR is aware, on Kos, since late January 2020, all newcomers, with the sole exception of registered unaccompanied minors, are now detained upon arrival.

As found by the UN Working Group on Arbitrary Detention (December 2019), following the group's visit to Greece, the Working Group was informed that no information is provided by the police to the detainees on their right to apply for international protection or the procedural stages, neither on the detention time limits. Furthermore, the detention decisions are only drafted in Greek and most pre-removal detention centers (PRDC) do not have regular interpretation services for most languages.<sup>84</sup> The recent CPT report, issued in 2020 following the 2019 visit of the Delegation, notes in this regard "[t]he CPT's delegation also received numerous complaints by foreign national detainees who stated that they had not been informed of their rights in a language they could understand and that they had signed documents in the Greek language without knowing their content and without having been provided with the assistance of an interpreter".<sup>85</sup>

L. 4636/2019, voted in November 2019, introduced extensive provisions for the detention of asylum seekers and significantly lowered guarantees regarding the imposition of detention measures against asylum Applicants, threatening to undermine the principle that detention of asylum seekers should only be applied exceptionally and as a measure of last resort.<sup>86</sup> *Inter alia*, L. 4636/2019 expanded the grounds for detention, by introducing the possibility to detain an asylum seeker who has already applied for asylum at liberty. Moreover, L. 4636/2019 increases the maximum time limit for the detention of asylum seekers to 18 months and additionally provides that the period of detention on the basis of return or deportation procedures is not calculated in the total time of detention, and thus the total detention period of a third country national within the migration context may reach 36 months (18 months while the asylum procedure + 18 months in view of removal).

L. 4686/2020, voted in May 2020, introduced a new type of facility named as "Island Closed Controlled Facilities". Reception and identification centers, closed temporary reception facilities, pre-removal detention facilities and separate areas for the

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<sup>84</sup> UN Working Group on Arbitrary Detention, Preliminary Findings from its visit to Greece (2 - 13 December 2019), available at <https://bit.ly/3aKJvQB>.

<sup>85</sup> CPT, Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 28 March to 9 April 2019, CPT/Inf (2020) 15, April 2020, para. 100.

<sup>86</sup> See UN High Commissioner for Refugees (UNHCR), UNHCR Comments on the Law on "International Protection and other Provisions" (Greece), p. 9-10.



accommodation of vulnerable persons may operate in distinct areas of such facilities.<sup>87</sup> The law does not specify the legal regime of persons who will remain in these facilities, neither provides further information, such as on which grounds asylum seekers will be placed in such facilities, the possibility of and procedures for entry and exit, general conditions, the maximum period of stay and whether and under which conditions legal representatives and other actors will have access to these facilities.<sup>88</sup> The legal regime applied and if this amounts to automatic upon arrival detention of asylum seekers should be assessed.

**Detention conditions:**<sup>89</sup> Despite the fact that good practices, such as allowing detainees to use their mobile phones, have been adopted in some pre-removal detention facilities, the overall detention conditions in pre-removal detention facilities fail to meet standards, in many cases, *inter alia* due to their carceral, prison-like design, lack of sufficient hygiene and non-food items, including clothes and shoes, clean mattresses and clean blankets, and persisting overcrowding in some facilities which has not been improved during the previous period. No measures for the decongestion of the detention facilities have been taken, following the outspread of the COVID-19 pandemic. As mentioned by the Greek Ombudsman on its Annual Report (2019) “during the monitoring visits in pre-removal detention facilities [...] the inadequate provision of health services (with an extreme example being Moria PRDC) and insufficient maintenance of the facilities (with an extreme example being PRDC in Xanthi) are found as persistent problems”.<sup>90</sup>

More precisely and as of the provision of health care in pre-removal detention facilities, official statistics demonstrate substantial medical staff shortages. At the end of 2019, there were a mere four doctors in total in the detention centres (1 in Amygdaleza, 1 in Korinthos, 1 in Xanthi and 1 in Orestiada PRDC). There was no doctor present in Tavros and Paranesti on the mainland and no doctor, no interpreter and no psychiatrist present on the Eastern Aegean islands PRDCs (Lesvos PRDF and Kos PRDF). According to the data provided by the Authorities to the Committee of Ministers (June 2020), there is one doctor present in Amygdaleza PRDC, one in Xanthi PRDC and one in Orestiada PRDC.<sup>91</sup>

Police stations and other police facilities continued to be widely used in 2019 and 2020 for detaining third country nationals, including asylum seekers. As mentioned, by the end of 2019, more than 26.3% of administratively detained third country nationals were held in police stations. *Inter alia* no medical services are provided to police stations and other

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<sup>87</sup> Article 30(4) L. 4686/2020.

<sup>88</sup> See UN High Commissioner for Refugees (UNHCR), UNHCR Comments on the Draft Law "Improvement of Migration Legislation, amendment of provisions of Laws 4636/2019 (A' 169), 4375/2016 (A' 51), 4251/2014 (A' 80) and other Provisions", 12 June 2020, <https://www.refworld.org/docid/5ee359cb4.html>.

<sup>89</sup> AIDA Report on Greece, Update 2018, pp. 164-170.

<sup>90</sup> Greek Ombudsman, *Annual Report 2019*, available at: <https://bit.ly/3fZEaZl> (in Greek), p. 144.

<sup>91</sup> DH-DD (2020) 571, Communication from Greece concerning the groups of cases of M.S.S. v. Greece (Application No. 30696/09) and Rahimi v. Greece (8687/08), 26 June 2020.





police facilities. Despite the fact that the ECtHR has found a violation of Art. 3 ECHR “on the nature of police stations per se, which are places designed to accommodate people for a short time only”,<sup>92</sup> detention in police station is applied for prolonged periods, exceeding month(s) in many cases.

#### IV. Reception and protection of unaccompanied minors

**Unaccompanied minors:**<sup>93</sup> In a welcome development, in March 2020, a number of EU Member States accepted to relocate a number of 1,600 unaccompanied children from Greece.<sup>94</sup> However, significant gaps in child protection continue to hinder the effective access of unaccompanied and separated children to their rights and expose them to major risks. *Inter alia*:

- The regulatory framework for the Guardianship of unaccompanied children, initially introduced by law 4554/2018, and which following a number of postponement was about to start being implemented as of March 2020, is not operational yet as the Registry of Professional Guardians is not available. Unaccompanied minors are still deprived of an effective guardianship system and the appointment of a Guardian.
- The lack of sufficient accommodation capacity results in the majority of unaccompanied children being deprived of appropriate reception conditions. As of 31 May 2020, the number of unaccompanied and separated children (UASCs) in Greece was 4,898. Out of these, 2,130 were accommodated in a long term or emergency accommodation facility for unaccompanied minors. 1,335 UASCs remained in significant substandard conditions in islands RICs or in the Evros RIC under a legal regime amounting to de facto detention. 956 unaccompanied children were reported as living in insecure housing conditions. 206 children remained detained in police stations or pre-removal centers under the pretext of “protective custody”.<sup>95</sup> Greek law does not explicitly prohibit the detention of unaccompanied children and children are detained in practice, under the pretext of ‘protective custody’ while awaiting a place in a shelter to be found and despite the fact that ‘detention is never in their best interest’. Detention on the basis of the provisions concerning “protective custody” is not subject to a maximum time limit.<sup>96</sup>

GREEK COUNCIL FOR REFUGEES  
Athens, 30 July 2020

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<sup>92</sup> ECtHR, *S.Z. v. Greece*, application No 66702/13, 21 June 2018, para 40.

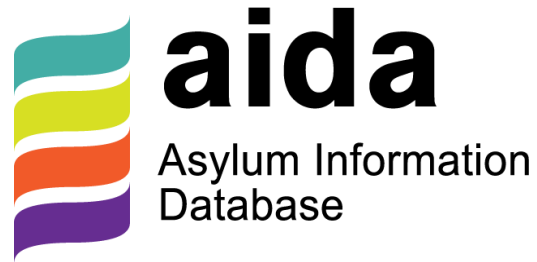
<sup>93</sup> AIDA Report on Greece, Update 2019, *ibid*, pp. 122, 170-13 and 189-193.

<sup>94</sup> EU Commissioner for Home Affairs, Intervention (via video conference) in European Parliament LIBE Committee on the situation at the Union’s external borders in Greece, 2 April 2020, available at: <https://bit.ly/3adzSKl>.

<sup>95</sup> EKKKA, Situation Update: Unaccompanied Children (UAC) in Greece, 31 May 2020, available at: <https://bit.ly/396KWty>.

<sup>96</sup> Article 118, PD 141/1991.





# Country Report: Greece



2019  
Update



## Acknowledgements & Methodology

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The information in this report is up-to-date as of 31 December 2019, unless otherwise stated. The report includes legislative amendments introduced by L. 4636/2019 on international protection and other provisions, which entered into force on 1 January 2020. Amendments introduced by L. 4686/2020 in May 2020 are not included in the present report.

## The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information on asylum practice in 23 countries. This includes 19 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, SI) and 4 non-EU countries (Serbia, Switzerland, Turkey and the United Kingdom) which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website [www.asylumineurope.org](http://www.asylumineurope.org). The database also seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



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## Glossary

<b>EU-Turkey statement</b>	Statement of Heads of State or Government of 18 March 2016 on actions to address the refugee and migration crisis, including the return of all persons irregularly entering Greece after 20 March 2016 to Turkey.
<b>Fast-track border procedure</b>	Expedient version of the border procedure, governed by Article 90(3) IPA and applicable in exceptional circumstances on the basis of a Ministerial Decision.
<b>Objections against detention</b>	Procedure for challenging detention before the President of the Administrative Court, whose decision is non-appealable
<b>Reception and Identification Centre</b>	Centre in border areas where entrants are identified and referred to asylum or return proceedings. Six such centres exist in <b>Fylakio, Lesvos, Chios, Samos, Leros</b> and <b>Kos</b> .



## List of Abbreviations

<b>AEMY</b>	Health Unit SA   Ανώνυμη Εταιρεία Μονάδων Υγείας
<b>AIRE</b>	Advice on Individual Rights in Europe
<b>AMIF</b>	Asylum, Migration and Integration Fund
<b>AMKA</b>	Social Security Number   Αριθμός Μητρώου Κοινωνικής Ασφάλισης
<b>AAU</b>	Autonomous Asylum Unit   Αυτοτελές Κλιμάκιο Ασύλου
<b>AVRR</b>	Assisted Voluntary Return and Reintegration
<b>CERD</b>	United Nations Committee on the Elimination of Racial Discrimination
<b>DYEP</b>	Refugee Reception and Education Facilities   Δομές Υποδοχής και Εκπαίδευσης Προσφύγων
<b>EASO</b>	European Asylum Support Office
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>EKKA</b>	National Centre of Social Solidarity   Εθνικό Κέντρο Κοινωνικής Αλληλεγγύης
<b>ELIAMEP</b>	Hellenic Foundation for European and Foreign Policy   Ελληνικό Ίδρυμα Ευρωπαϊκής και Εξωτερικής Πολιτικής
<b>ESTIA</b>	Emergency Support to Integration and Accommodation
<b>GCR</b>	Greek Council for Refugees   Ελληνικό Συμβούλιο για τους Πρόσφυγες
<b>IPA</b>	International Protection Act   Νόμος Περί Διεθνούς Προστασίας
<b>JMD</b>	Joint Ministerial Decision   Κοινή Υπουργική Απόφαση
<b>KEA</b>	Social Solidarity Income   Κοινωνικό Επίδομα Αλληλεγγύης
<b>KEELPNO</b>	Hellenic Centre for Disease Control and Prevention   Κέντρο Ελέγχου και Πρόληψης Νοσημάτων
<b>L</b>	Law   Νόμος
<b>MD</b>	Ministerial Decision   Υπουργική Απόφαση
<b>NCHR</b>	National Commission for Human Rights   Εθνική Επιτροπή για τα Δικαιώματα του Ανθρώπου
<b>ΠΑΑΥΠΑ</b>	Foreigner's Temporary Insurance and Health Coverage Number   Προσωρινός Αριθμός Ασφάλισης και Υγειονομικής Περίθαλψης Αλλοδαπού
<b>PACE</b>	Parliamentary Assembly of the Council of Europe
<b>PD</b>	Presidential Decree   Προεδρικό Διάταγμα
<b>RIC</b>	Reception and Identification Centre   Κέντρο Υποδοχής και Ταυτοποίησης
<b>RIS</b>	Reception and Identification Service   Υπηρεσία Υποδοχής και Ταυτοποίησης
<b>RAO</b>	Regional Asylum Office   Περιφερειακό Γραφείο Ασύλου
<b>UNHCR</b>	United Nations High Commissioner for Refugees

## Statistics

### Overview of statistical practice

Monthly statistics on asylum applications and first instance decisions are published by the Asylum Service,<sup>1</sup> including a breakdown per main nationalities.

### Applications and granting of protection status at first instance: 2019

	Applicants in 2019	Pending at end 2019	Refugee status	Subsidiary protection	Rejection	Refugee rate	Subs. Prot. rate	Rejection rate
<b>Total</b>	77,287	87,461	13,509	3,846	13,689	43.51%	12.38%	44.09%

Breakdown by countries of origin of the total numbers

Afghanistan	23,828	27,608	1,691	2,257	1,461	31.26%	41.72%	27.01%
Syria	10,856	16,165	6,565	2	37	99.4%	0.04%	0.56%
Pakistan	7,140	6,018	106	12	4,342	2.37%	0.26%	97.35%
Iraq	5,738	7,283	1,808	966	1,285	44.54%	23.79%	31.65%
Other countries	29,725	30,387	3,339	609	6,564	31.76%	5.79%	62.44%

Source: Asylum Service. It concerns in-merit decisions only.

	Number	Percentage
<b>Total number of applicants</b>	77,287	100%
Men	51,749	67%
Women	25,536	33%
Children	25,368	32.8%
Unaccompanied children	3,330	4.3%

Source: Asylum Service. The figures on children and unaccompanied children are part of the figures on men and women.

<sup>1</sup> Asylum Service, *Statistical data*, available at: [http://asylo.gov.gr/en/?page\\_id=110](http://asylo.gov.gr/en/?page_id=110).

**Comparison between first instance and appeal in merits decision rates: 2019**

	First instance		Appeal	
	Number	Percentage	Number	Percentage
<b>Total number of decisions</b>	<b>31,044</b>	<b>100</b>	<b>10,531</b>	<b>100</b>
<b>Positive decisions</b>	<b>17,355</b>	<b>55.9%</b>	<b>625</b>	<b>12.1%</b>
<i>Refugee status</i>	<i>13,509</i>	<i>43.5%</i>	<i>312</i>	<i>2.96%</i>
<i>Subsidiary protection</i>	<i>3,846</i>	<i>12.4%</i>	<i>313</i>	<i>2.97%</i>
<b>Referral for humanitarian status</b>	<i>Not applicable</i>	<i>Not applicable</i>	<b>640</b>	<i>6.07%</i>
<b>Negative decisions</b>	<b>13,689</b>	<b>44.1%</b>	<b>9,266</b>	<b>87.9%</b>

Source: Asylum Service; Appeals Authority.

## Overview of the legal framework

### Main legislative acts relevant to asylum procedures, reception conditions, detention and content of protection

Title (EN)	Original Title (GR)	Abbreviation	Web Link
Law 4686/2020 "Improvement of the migration legislation, amendment of L. 4636/2019 (A' 169), 4375/2016 (A' 51), 4251/2014 (A' 80) and other provisions" Gov. Gazette A' 96 /12-5-2020	Νόμος 4686/2020 «Βελτίωση της μεταναστευτικής νομοθεσίας, τροποποίηση διατάξεων των νόμων 4636/2019 (Α' 169), 4375/2016 (Α' 51), 4251/2014 (Α' 80) και άλλες διατάξεις». ΦΕΚ Α' 96 /12-5-2020	L 4686/2020	<a href="https://bit.ly/2LGoOvI">https://bit.ly/2LGoOvI</a> (GR)
Law 4636/2019 "on international protection and other provisions" Gazette 169/A/1-11-2019	Νόμος 4636/2019 «Περί Διεθνούς Προστασίας και άλλες διατάξεις» ΦΕΚ 169/A/1-11-2019	IPA	<a href="https://bit.ly/2Q9VnFk">https://bit.ly/2Q9VnFk</a> (GR)
Law 4375/2016 "Organisation and functioning of the Asylum Service, Appeals Authority, Reception and Identification Service, establishment of General Secretariat for Reception, transposition of Directive 2013/32/EU of the European Parliament and of the Council 'on common procedures for granting and withdrawing international protection (recast)' (L 180/29.6.2013), provisions on employment of beneficiaries of international protection" and other provisions. Gazette 51/A/3-4-2016  <i>Amended by:</i> Law 4399/2016, Gazette 117/A/22-6-2016 <i>Amended by:</i> Law 4461/2017, Gazette 38/A/28-3-2017 <i>Amended by:</i> Law 4485/2017, Gazette 114/A/4-8-2017 <i>Amended by:</i> Law 4540/2018, Gazette 91/A/22-5-2018 <i>Amended by:</i> Law 4636/2019, Gazette 69/A/1-11-2019	Νόμος 4375/2016 «Οργάνωση και λειτουργία Υπηρεσίας Ασύλου, Αρχής Προσφυγών, Υπηρεσίας Υποδοχής και Ταυτοποίησης σύσταση Γενικής Γραμματείας Υποδοχής, προσαρμογή της Ελληνικής Νομοθεσίας προς τις διατάξεις της Οδηγίας 2013/32/ΕΕ του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου «σχετικά με τις κοινές διαδικασίες για τη χορήγηση και ανάκληση του καθεστώτος διεθνούς προστασίας (αναδιτύπωση)» (L 180/29.6.2013), διατάξεις για την εργασία δικαιούχων διεθνούς προστασίας και άλλες διατάξεις. ΦΕΚ 51/A/3-4-2016  <i>Τροπ.:</i> Νόμος 4399/2016, ΦΕΚ 117/A/22-6-2016 <i>Τροπ.:</i> Νόμος 4461/2017, ΦΕΚ 38/A/28-3-2017 <i>Τροπ.:</i> Νόμος 4485/2017, ΦΕΚ 114/A/4-8-2017 <i>Τροπ.:</i> Νόμος 4540/2018, ΦΕΚ 91/A/22-5-2018 <i>Τροπ.:</i> Νόμος 4636/2019, ΦΕΚ 169/A/1-11-2019	L 4375/2016 (Asylum Act)	<a href="http://bit.ly/2kKm2cu">http://bit.ly/2kKm2cu</a> (EN) <a href="https://bit.ly/2NU5U4A">https://bit.ly/2NU5U4A</a> (GR)  <a href="http://bit.ly/2IKABdD">http://bit.ly/2IKABdD</a> (GR) <a href="http://bit.ly/2y0vNq5">http://bit.ly/2y0vNq5</a> (GR) <a href="http://bit.ly/2FLLM3H">http://bit.ly/2FLLM3H</a> (GR) <a href="https://bit.ly/2KCbdx6">https://bit.ly/2KCbdx6</a> (GR) <a href="https://bit.ly/2Q9VnFk">https://bit.ly/2Q9VnFk</a> (GR)
Law 3907/2011 "on the establishment of an Asylum Service and a First Reception Service, transposition into Greek legislation of Directive 2008/115/EC "on common standards and procedures in Member States for returning	Νόμος 3907/2011 «Ίδρυση Υπηρεσίας Ασύλου και Υπηρεσίας Πρώτης Υποδοχής, προσαρμογή της ελληνικής νομοθεσίας προς τις διατάξεις της Οδηγίας 2008/115/ΕΚ «σχετικά με τους κοινούς κανόνες και διαδικασίες στα	L 3907/2011	<a href="http://bit.ly/1KHa9dV">http://bit.ly/1KHa9dV</a> (EN)

<p>illegally staying third country nationals" and other provisions.                  Gazette 7/A/26-01-2011</p> <p><i>Amended by:</i>                  Presidential Decree 133/2013, Gazette 198/A/25-09-2013                  Law 4058/2012, Gazette 63/A/22-03-2012                  Law 4375/2016, Gazette 51/A/3-4-2016</p>	<p>κράτη-μέλη για την επιστροφή των παρανόμως διαμενόντων υπηκόων τρίτων χωρών» και λοιπές διατάξεις»                  ΦΕΚ 7/A/26-01-2011</p> <p><i>Τροποποίηση από:</i>                  Προεδρικό Διάταγμα 133/2013, ΦΕΚ 198/A/25-09-2013                  Νόμος 4058/2012, ΦΕΚ 63/A/22-03-2012                  Νόμος 4375/2016, ΦΕΚ 51/A/3-4-2016</p>	<p>PD 133/2013                  L 4058/2012                  L 4375/2016</p>	<p><a href="http://bit.ly/1GfXFJ2">http://bit.ly/1GfXFJ2</a> (GR)  <a href="http://bit.ly/1F0oiWx">http://bit.ly/1F0oiWx</a> (GR)  <a href="http://bit.ly/234vUhP">http://bit.ly/234vUhP</a> (GR)</p>
<p>Presidential Decree 114/2010 "on the establishment of a single procedure for granting the status of refugee or of beneficiary of subsidiary protection to aliens or to stateless persons in conformity with Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status"                  Gazette 195/A/22-11-2010</p> <p><i>Amended by:</i>                  Presidential Decree 116/2012, Gazette 201/A/19-10-2012                  Presidential Decree 113/2013, Gazette 146/A/14-06-2013</p> <p>Presidential Decree 167/2014, Gazette 252/A/01-12-2014                  Law 4375/2016, Gazette 51/A/3-4-2016</p>	<p>Προεδρικό Διάταγμα 114/2010 «Καθιέρωση ενιαίας διαδικασίας αναγνώρισης σε αλλοδαπούς και ανιθαγενείς του καθεστώτος του πρόσφυγα ή δικαιούχου επικουρικής προστασίας σε συμμόρφωση προς την Οδηγία 2005/85/ΕΚ του Συμβουλίου 'σχετικά με τις ελάχιστες προδιαγραφές για τις διαδικασίες με τις οποίες τα κράτη μέλη χορηγούν και ανακαλούν το καθεστώς του πρόσφυγα», ΦΕΚ 195/A/22-11-2010</p> <p><i>Τροποποίηση από:</i>                  Προεδρικό Διάταγμα 116/2012, ΦΕΚ 201/A/19-10-2012                  Προεδρικό Διάταγμα 113/2013, ΦΕΚ 146/A/14-06-2013</p> <p>Προεδρικό Διάταγμα 167/2014, ΦΕΚ 252/A/01-12-2014                  Νόμος 4375/2016, ΦΕΚ 51/A/3-4-2016</p>	<p>PD 114/2010                  (Old Procedure Decree)</p> <p>PD 116/2012                  PD 113/2013</p> <p>PD 167/2014                  L 4375/2016</p>	<p><a href="http://bit.ly/1LWAO3C">http://bit.ly/1LWAO3C</a> (EN)</p> <p><a href="http://bit.ly/1GfXCwV">http://bit.ly/1GfXCwV</a> (EN)  <a href="http://bit.ly/1M36apZ">http://bit.ly/1M36apZ</a> (EN)  <a href="http://bit.ly/1ENgV9B">http://bit.ly/1ENgV9B</a> (GR)  <a href="http://bit.ly/1ct2sZY">http://bit.ly/1ct2sZY</a> (GR)  <a href="http://bit.ly/234vUhP">http://bit.ly/234vUhP</a> (GR)</p>
<p>Law 4251/2014 "Immigration and Social Integration Code and other provisions"                  Gazette 80/A/01-04-2014</p> <p><i>Amended by:</i> Law 4332/2015, Gazette 76/A/09-07-2015  <i>Amended by:</i> Law 4540/2018, Gazette 91/A/22-5-2018</p>	<p>Νόμος 4251/2014 «Κώδικας Μετανάστευσης και Κοινωνικής Ένταξης και λοιπές διατάξεις»                  ΦΕΚ 80/A/01-04-2014</p> <p><i>Τροπ:</i> Νόμος 4332/2015, ΦΕΚ 76/A/09-07-2015  <i>Τροπ.:</i> Νόμος 4540/2018, ΦΕΚ 91/A/22-5-2018</p>	<p>Immigration Code</p> <p>L 4332/2015</p>	<p><a href="http://bit.ly/1FOuxp0">http://bit.ly/1FOuxp0</a> (GR)</p> <p><a href="http://bit.ly/1LfUfDB">http://bit.ly/1LfUfDB</a> (GR)  <a href="https://bit.ly/2KCbDx6">https://bit.ly/2KCbDx6</a> (GR)</p>
<p>Law 3386/2005 "Entry, Residence and Social Integration of Third Country Nationals on the Greek Territory"</p>	<p>Νόμος 3386/2005 «Είσοδος, διαμονή και κοινωνική ένταξη υπηκόων τρίτων χωρών στην Ελληνική Επικράτεια»  <i>Καταργήθηκε από:</i> Νόμος 4251/2014 πλην των διατάξεων των άρθρων 76, 77, 78, 80, 81, 82, 83, 89 παρ. 1-3</p>	<p>L 3386/2005</p>	<p><a href="http://bit.ly/1Pps1eO">http://bit.ly/1Pps1eO</a> (EN)  <a href="http://bit.ly/1Qkzh9R">http://bit.ly/1Qkzh9R</a> (GR)</p>

<p><i>Abolished by:</i> Law 4251/2014 except for Articles 76, 77, 78, 80, 81, 82, 83, 89(1)-(3) <i>Amended by:</i> Law 4332/2015</p>	<p><i>Τροπ.:</i> Νόμος 4332/2015</p>		
<p>Law 4554/2018 “Guardianship of unaccompanied children and other provisions” Gazette 130/A/18-7-2018</p>	<p>Νόμος 4554/2018 «Επιτροπεία ασυνόδευτων ανηλίκων και άλλες διατάξεις», ΦΕΚ 130/A/18-7-2018</p>	L 4554/2018	<a href="https://bit.ly/2FAeL7z">https://bit.ly/2FAeL7z</a> (GR)
<p>Presidential Decree 131/2006 on the transposition of Directive 2003/86/EC on the right to family reunification Gazette 143/A/13-7-2006  <i>Amended by:</i> PD 167/2008, PD 113/2013</p>	<p>Προεδρικό Διάταγμα 131/2006 Εναρμόνιση της ελληνικής νομοθεσίας με την Οδηγία 2003/86/ΕΚ σχετικά με το δικαίωμα οικογενειακής επανένωσης, ΦΕΚ 143/A/13-7-2006 <i>Τροπ.:</i> ΠΔ 167/2008, ΠΔ 113/2013  Υπουργική Απόφαση αριθμ. 1140 (ΦΕΚ Β'-4736-20.12.2019) Περιορισμός Κυκλοφορίας των Αιτούντων Διεθνή Προστασία.</p>	PD 131/2006 (Family Reunification Decree)	<a href="http://bit.ly/2nHCPOu">http://bit.ly/2nHCPOu</a> (GR)

### Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions, detention and content of protection

Title (EN)	Original Title (GR)	Abbreviation	Web Link
<p>Decision No 7330 on the Prolongation of the validity of Residence Permits, Asylum Seekers cards and other deadlines related to the administrative examination procedure of application for international protection at first and second instance Gazette B/7330/15.4.2020 Modified by Decision No TT 9028/2020, Gazette B/1854/15.05.2020</p>	<p>Απόφαση Αριθμ. οικ. 7330 /2020 (ΦΕΚ Β'-1426-15.04.2020) Παράταση ισχύος Αδειών Διαμονής, Δελτίων Αιτούντων Διεθνούς Προστασίας και λοιπών προθεσμιών που συνδέονται με τη διοικητική διαδικασία καταγραφής και εξέτασης αιτημάτων διεθνούς προστασίας α' και β' βαθμού. Τροποιήθηκε με την Υπουργική Απόφαση Αριθμ. ΤΤ 9028/2020 (ΦΕΚ Β'-1854-15.05.2020)</p>	Prolongation of the validity of Asylum Seekers Cards	<a href="https://bit.ly/3e4JKs4">https://bit.ly/3e4JKs4</a> (GR) <a href="https://bit.ly/3bOF5Zu">https://bit.ly/3bOF5Zu</a> (GR)
<p>Decision No 3063 on the Register of Greek and foreigner NGOs and Register for the members of NGOs</p>	<p>Απόφαση Αριθμ. 3063 (ΦΕΚ Β'-1382-14.04.2020) Καθορισμός λειτουργίας του «Μητρώου Ελληνικών και Ξένων Μη Κυβερνητικών Οργανώσεων (ΜΚΟ)» και του</p>	NGO's Register Decision	<a href="https://bit.ly/3bRKTI8">https://bit.ly/3bRKTI8</a> (GR)

Gazette B/1382/14.4.2020	«Μητρώου Μελών Μη Κυβερνητικών Οργανώσεων (ΜΚΟ)», που δραστηριοποιούνται σε θέματα διεθνούς προστασίας, μετανάστευσης και κοινωνικής ένταξης εντός της Ελληνικής Επικράτειας.		
Decision No 3686 on the Terms and conditions for the provision of material reception conditions under ESTIA II programmed for housing of international protection applicants Gazette B/13348/7.4.2020	Απόφαση Αριθμ. οικ. 13348 (ΦΕΚ Β'-1199-07.04.2020) Όροι παροχής υλικών συνθηκών υποδοχής υπό το πρόγραμμα «ESTIA II» για τη στέγαση αιτούντων διεθνή προστασία	Material reception conditions under ESTIA II JDM	<a href="https://bit.ly/3g78eCH">https://bit.ly/3g78eCH</a> (GR)
Decision No 3686 on the provision of legal aid to applicants for international protection Gazette B/1009/24.3.2020	Απόφαση αριθμ. 3686 (ΦΕΚ Β'-1009-24.03.2020) Παροχή νομικής συνδρομής σε αιτούντες διεθνή προστασία	Legal Aid JMD	<a href="https://bit.ly/3bKn0Mt">https://bit.ly/3bKn0Mt</a> (GR)
Decision No 2945 on the Establishment of Temporary Accommodation Facilities for third country nationals and stateless persons, who have applied for international protection Gazette B/2945/24.3.2020	Υπουργική Απόφαση αριθμ.2945 (ΦΕΚ Β'-1016-24.03.2020) Σύσταση Δομών Προσωρινής Υποδοχής Πολιτών Τρίτων Χωρών ή ανιθαγενών, οι οποίοι έχουν αιτηθεί διεθνή προστασία.	Establishment of Temporary Accommodation Facilities Decision	<a href="https://bit.ly/3g7Yyba">https://bit.ly/3g7Yyba</a> (GR)
Decision No Δ1α/ΓΠ.οικ. 20030 on Measures against the COVID-19 outbreak and its spread in Reception and Identification Centres across the country, valid from 21 March to 21 April 2020 Gazette B/985/31.1.2020	Απόφαση Αριθμ. Δ1α/ΓΠ.οικ. 20030 (ΦΕΚ Β" – 985-22.03.2020) Λήψη μέτρων κατά της εμφάνισης και διασποράς κρουσμάτων του κορωνοϊού COVID-19 στα Κέντρα Υποδοχής και Ταυτοποίησης, στο σύνολο της Επικράτειας, για το χρονικό διάστημα από 21.03.2020 έως και 21.04.2020	Measures against COVID 19 in RICs facilities Decision	<a href="https://bit.ly/3bNaw6A">https://bit.ly/3bNaw6A</a> (GR)
Decision No 717/2020 on the Access to healthcare services for applicants for international protection– P.A.A.Y.P.A. issuance Gazette B/717/31.1.2020	Υπουργική Απόφαση αριθμ. 717 (ΦΕΚ Β'-199-31.01.2020) Ρυθμίσεις για τη διασφάλιση της πρόσβασης των αιτούντων διεθνούς προστασίας στις υπηρεσίες υγείας, την ιατροφαρμακευτική περίθαλψη, την κοινωνική ασφάλιση και την αγορά εργασίας – Έκδοση Π.Α.Α.Υ.Π.Α.	Access to healthcare services Decision	<a href="https://bit.ly/2yjx8Oz">https://bit.ly/2yjx8Oz</a> (GR)
Decision No 1333/2019 on the Application of the provisions of Article 90 paras.3 and 5 of L 4636/2020 Gazette B/4892/31.12.2019	Απόφαση αριθμ. 1333 (ΦΕΚ Β'-4892-31.12.2019) Εφαρμογή των διατάξεων των παραγράφων 3 και 5 του άρθρου 90 του ν. 4636/2019 (ΦΕΚ 169 Α').	Fast-Track Border Procedure JMD	<a href="https://bit.ly/3cPAojw">https://bit.ly/3cPAojw</a> (GR)

Decision No 1302(2)/2019 on the List of safe countries of origin Gazette B/4907/31.12.2019	Απόφαση αριθμ. 1302 (2) (ΦΕΚ τ.Β 4907-31-12-2019) Κατάρτιση Εθνικού Καταλόγου χωρών καταγωγής που χαρακτηρίζονται ως ασφαλείς σύμφωνα με το άρθρο 87 παρ. 5 του ν.4636/2019.	List of safe countries of origin Decision	<a href="https://bit.ly/2AMPjgr">https://bit.ly/2AMPjgr</a> (GR)
Decision No 1140/2019 of the Minister of Migration Policy on the restriction of movement of applicants for international protection Gazette B/ B/4736/20.12.2019	Υπουργική Απόφαση αριθμ. 1140 (ΦΕΚ Β' -4736-20.12.2019) Περιορισμός Κυκλοφορίας των Αιτούντων Διεθνή Προστασία.	Restriction of Movement Decision	<a href="https://bit.ly/2LG02eG">https://bit.ly/2LG02eG</a> (GR)
Joint Ministerial Decision Δ11/οικ.28303/1153 Definition of necessary formal and material conditions to be fulfilled for the selection of professional guardians, obstacles, establishment of number of unaccompanied minors by professional guardian, technical specifications on training and education, as well as regular evaluation, types, conditions, content of contracts, remuneration and necessary details Gazette B/2558/27-6-2019	Κοινή Υπουργική Απόφαση Δ11/οικ.28303/1153 Καθορισμός απαιτούμενων τυπικών και ουσιαστικών προσόντων που πρέπει να πληρούνται για την επιλογή ενός προσώπου ως επαγγελματία επιτρόπου, τα κωλύματα, καθορισμός αριθμού ασυνόδευτων ανηλίκων ανά επαγγελματία επίτροπο, τεχνικές λεπτομέρειες εκπαίδευσης, διαρκούς επιμόρφωσής τους, καθώς και της τακτικής αξιολόγησής τους, είδος, όροι, περιεχόμενο της σύμβασης, αμοιβή τους και κάθε αναγκαία λεπτομέρεια, ΦΕΚ Β/2558/27.6.2019	Guardianship JMD	<a href="https://bit.ly/2qL7FJr">https://bit.ly/2qL7FJr</a> (GR)
Decision οικ. 13411/2019 of the Minister of Migration Policy on restriction of movement of applicants for international protection Gazette B/2399/19.06.2019	Απόφαση αριθμ. οικ. 13411/2019 του Υπουργού Μεταναστευτικής Πολιτικής: Περιορισμός κυκλοφορίας των αιτούντων διεθνή προστασία, ΦΕΚ Β/2399/19.06.2019	Restriction of Movement Decision	<a href="https://bit.ly/32GYtU5">https://bit.ly/32GYtU5</a> (GR)
Decision οικ. 868/2018 of the Director of the Asylum Service on the duration of international protection applicants' cards Gazette B/201/30.01.2018	Απόφαση αριθμ. οικ. 868/2018 της Διευθύντριας Υπηρεσίας Ασύλου: Διάρκεια ισχύος δελτίων αιτούντων διεθνή προστασία, ΦΕΚ Β/201/30.01.2018	Asylum Seeker Card Decision	<a href="http://bit.ly/2DEDtka">http://bit.ly/2DEDtka</a> (GR)
Joint Ministerial Decision οικ. 13257/2016 on the implementation of the special border procedure (Article 60(4) L 4375/2016) Gazette B/3455/26.10.2016	Κοινή Υπουργική Απόφαση οικ. 13257/2016: Εφαρμογή των διατάξεων της παραγράφου 4 του άρθρου 60 του Ν. 4375/2016 (Α' 51), ΦΕΚ Β/3455/26.10.2016	Fast-Track Border Procedure JMD	<a href="http://bit.ly/2maKUeC">http://bit.ly/2maKUeC</a> (GR)
Joint Ministerial Decision οικ. 12205 on the provision of legal aid to applicants for international protection Gazette B/2864/9-9-2016	Κοινή Υπουργική Απόφαση οικ. 12205: Παροχή νομικής συνδρομής σε αιτούντες διεθνή προστασία, ΦΕΚ Β/2864/9-9-2016	Legal Aid JMD	<a href="http://bit.ly/2kPSjzE">http://bit.ly/2kPSjzE</a> (GR)
Joint Ministerial Decision 1982/2016 on age assessment of applicants for international protection	Κοινή Υπουργική Απόφαση 1982/2016 διαπίστωση ανηλικότητας των αιτούντων διεθνή προστασία, ΦΕΚ Β/335/16-2-2016	Age Assessment JMD	<a href="http://bit.ly/2lc8mDX">http://bit.ly/2lc8mDX</a> (GR)



Gazette B/335/16-2-2016			
Joint Ministerial Decision οικ. 10566 on the procedure for issuing travel documents to beneficiaries of and applicants for international protection Gazette B/3223/2-12-2014	Κοινή Υπουργική Απόφαση οικ. 10566 Διαδικασία χορήγησης ταξιδιωτικών εγγράφων σε δικαιούχους διεθνούς προστασίας, καθώς και στους αιτούντες διεθνή προστασία, ΦΕΚ Β/3223/2-12-2014	Travel Documents JMD	<a href="http://bit.ly/2mfwqXA">http://bit.ly/2mfwqXA</a> (GR)
Joint Ministerial Decision 7315/2014 on the procedure for granting residence permits to beneficiaries of international protection Gazette B/2461/16-9-2014	Κοινή Υπουργική Απόφαση 7315/29.8.2014 Διαδικασία χορήγησης ΑΔΕΤ στους δικαιούχους διεθνούς προστασίας, ΦΕΚ Β/2461/16-9-2014	Residence Permits JMD	<a href="http://bit.ly/2o6rTuM">http://bit.ly/2o6rTuM</a> (GR)
Hellenic Police Circular 1604/17/681730/3-4-2017 on participation of applicants for international protection in voluntary repatriation programmes of the International Organisation for Migration (IOM)	Εγκύκλιος Ελληνικής Αστυνομίας 1604/17/681730/3-4-2017 Συμμετοχή αλλοδαπών υπηκόων αιτούντων τη χορήγηση καθεστώτος διεθνούς προστασίας στα προγράμματα οικειοθελούς επαναπατρισμού του Διεθνούς Οργανισμού Μετανάστευσης (Δ.Ο.Μ.)		<a href="http://bit.ly/2E8Mlmr">http://bit.ly/2E8Mlmr</a> (GR)

## Overview of the main changes since the previous report update

The report was previously updated in **March 2019**.

### COVID-19 related measures

Please note that this report has largely been written prior to the outbreak of COVID-19. Subsequently measures have been taken that affect access to the asylum procedure for asylum seekers. These measures do not figure extensively in this AIDA report. This box presents some of the main measures.

- ❖ **Asylum procedure:** The Asylum Service, the Regional Asylum Offices (RAO) and the Autonomous Asylum Units (AAU) have all suspended the reception of public between 13 March and 15 May 2020. During this period, applications for international protection were not registered, interviews were not conducted and appeals were not registered. On the basis of a ministerial decision, the asylum seekers' cards that expired between 13 March 2020 and 31 May 2020 were renewed for six months from the day of the expiry of the card. Thus, applicants do not have to present themselves to the Asylum Service for renewals up until the 31 May 2020, with the exception of applicants in **Lesvos, Samos, Chios, Leros** and **Kos**.

The Asylum Service resumed its operation on 18 May 2020, which included the service of first instance decisions and the lodging of appeals. Since 18 May 2020, a number of administrative procedures (e.g. applications to change: the address, the telephone number, personal data, the separation of files, the procurement of copies from the personal file, the rescheduling and the prioritisation of hearings, the provision of legal aid etc.) can take place online. Interviews scheduled during the suspension of the work of the Asylum Service (13 March 2020- 15 May 2020) will be rescheduled. Remote test asylum interviews will also be conducted. With the exception of persons under administrative detention, following the resumption of the operation of the Asylum Service, no registration of new asylum applications took place by the end of May 2020.

- ❖ **Reception on the mainland:** Accommodation facilities on the mainland in which COVID-19 cases were identified were put in quarantine for 14 days and all residents, i.e. COVID-19 cases and residents which have not been identified as such, were not allowed to exit the facility. COVID-19 cases, followed by a 14-day quarantine, have been confirmed in the beginning of April 2020 in following accommodation facilities: in **Ritsona** (a camp in the Evoia region), **Malakasa** (a camp in the Attica region) and **Koutsohero** (a camp in the Larisa region). Moreover, COVID-19 cases were also confirmed in a hotel used for the accommodation of applicants in **Kranidi** (Peloponnese) in late April 2020. Following the initial 14-day quarantine imposed at the beginning of April 2020, the lockdown in **Ritsona, Malakasa** and **Koutsohero** have been successively prolonged until 7 June 2020, as opposed to the lockdown imposed on the general population which ended on 4 May 2020. As reported, the "management of COVID-19 outbreaks in camps and facilities by the Greek authorities follows a different protocol compared to the one used in cases of outbreaks in other enclosed population groups. The Greek government protocol for managing an outbreak in a refugee camp, known as the 'Agnodiki Plan', details that the facility should be quarantined and all cases (confirmed and suspected) are isolated and treated *in situ*. In similar cases of outbreaks in enclosed population groups (such as nursing homes or private haemodialysis centres) vulnerable individuals were immediately moved from the site to safe accommodation, while all confirmed and suspected cases were isolated off-site in a separate facility".
- ❖ **Reception on the islands:** Since late March-beginning of April 2020, newly arrived persons arriving on the Greek Islands are subject to a 14-day quarantine for the purposes of prevention of a potential spread of COVID-19, prior to their transfer to Reception and Identification Centres (RICs). Due to the lack of specific places/sites for this purpose, newly arrived persons subject to the 14 days quarantine had to remain at the point of arrival, i.e. in isolated beaches or in other

inadequate locations (e.g. ports). A dedicated site for these purposes has been in operation since 8 May 2020 in **Lesvos**.

For those already accommodated in RIC facilities on the five islands' (**Lesvos, Chios, Samos, Kos, Leros**) since 22 March 2020, there has been a lockdown and annexes of these facilities. During the lockdown, residents of these facilities are restricted within the perimeter of the centre and exit is not allowed with the exception of one representative of each family or group of residents who is allowed to exit the facility (between 7am and 7pm) in order to visit the closest urban centre to cover basic needs. During that same period, all visits or activities inside the RICs not related to accommodation, food provision and medical care of RIC residents, are only permitted following explicit authorisation of the RIC management. Similarly, access to legal services must be allowed by the RIC management and must take place in a specific area, where this is feasible.

Special health units were also established in order to treat any case of COVID-19 and to conduct health screenings for all RIC staff. Civil society organisations have urged the Greek Authorities to urgently evacuate the squalid Greek camps on the islands. As they note, "camps, especially on the Aegean islands, suffer from severe overcrowding and lack of adequate sanitary facilities, making it impossible to ensure social distancing and hygiene conditions for both residents and employees. This poses a major threat to public health for both asylum seekers and for society as large". As reported "conditions in the island RICs are overcrowded and unhygienic, putting residents at risk from communicable disease and making it all but impossible to follow public health guidance around prevention of COVID-19. The RICs are currently several times over capacity, and many residents are living in informal areas around the official camps. The provision of water and sanitation services are not sufficient for the population, thereby presenting significant risks to health and safety. In some parts of the settlement in Moria, there are 167 people per toilet and more than 242 per shower. Around 5,000 people live in an informal extension to the Moria camp known as the 'Olive Grove' who have no access to water, showers or toilets. Residents of island RICs must frequently queue in close proximity to each other for food, medical assistance, and washing. In such conditions, regular handwashing and social distancing are impossible". The restriction of movement for persons residing on the island RICs was been successively prolonged up to 7 June 2020, as opposed to the lockdown on the general population which ended on 4 May 2020.

A plan to transfer vulnerable asylum seekers out of the RICs was also announced in March 2020. In early April 2020, UNHCR launched an open call for renting hotel rooms on the Greek Islands and boats for the accommodation of vulnerable applicants residing in the Aegean RICs facilities, with a view to face a potential spread of COVID-19 in the reception facilities and its impact on local communities. Furthermore, a number of 1,138 applicants have been transferred from the islands to the mainland during April 2020. However, islands RICs remain significant overcrowded. 34,544 persons remained in islands' RICs facilities with a nominal capacity of 6,095 places as of 30 April 2020.

By late May 2020, there have been no confirmed cases of COVID-19 among persons residing in the RIC facilities on the Greek islands. Four cases have been identified among new arrivals to **Lesvos**. There have been 9 reported local Greek population cases across all the Aegean islands where RICs are located.

- ❖ **Detention:** No measures regarding the decongestion of detention facilities and the reduction of the number of detainees have been taken during the COVID-19 outbreak. The proportionality/necessity of the detention measures have not been re-examined, despite the suspension of returns to a number of countries of origin or destination, including Turkey, and the delays occurred due to the suspension of the work of the Asylum Service during the COVID-19 crisis.

## General context

In 2019, 74,613 persons arrived in Greece. This is an increase of 48% compared to 2018. In 2019, Greece alone received more arrivals than Spain, Italy, Malta and Cyprus together (49,100). Out of those a total of 59,726 persons arrived in Greece by sea in 2019, compared to 32,494 in 2018. The majority originated from Afghanistan (40%), Syria (27.4%) and DRC (6.7%). More than half of the population were women (23%) and children (36%), while 41% were adult men. Moreover, 14,887 persons arrived in Greece through the Greek-Turkish land border of **Evros** in 2019, compared to a total of 18,014 in 2018. The Asylum Service received 77,287 asylum applications in 2019 (15.4% rise compared to 2018). Afghans are the largest group of applicants with 23,828 applications, followed by Syrians with 10,856 applications.

Following the July 2019 elections, the new government announced a more punitive policy on asylum, with a view to reduce the number of people arriving, increase the number of returns to Turkey and strengthen border control measures. Following the elections, the Ministry of Migration Policy has been repealed and subsumed to the Ministry of Citizens Protection. In January 2020, however, the Ministry for Migration and Asylum was re-established.

A new law on asylum has been issued in November 2019. L. 4636/2019 (hereinafter: International Protection Act/IPA). It has been repeatedly criticised by national and international human rights bodies including the Greek Ombudsman, the Greek National Commission for Human Rights (GNCHR), UNHCR and civil society organisations, as *inter alia* an attempt to lower protection standards and create unwarranted procedural and substantive hurdles for people seeking international protection. As noted by UNHCR, the new law reduces safeguards for people seeking international protection and creates additional pressure on the overstretched capacity of administrative and judicial authorities. “The proposed changes will endanger people who need international protection[...] [the law] puts an excessive burden on asylum seekers and focuses on punitive measures. It introduces tough requirements that an asylum seeker could not reasonably be expected to fulfil” [...] “As a result, asylum seekers may be easily excluded from the process without having their international protection needs adequately assessed. This may expose them to the risk of refoulement”. In May 2020, less than 4 months after the entry into force of the IPA, national legislation has been reamended in May 2020. These amendments have been significantly criticised by human rights bodies, including the Council of Europe Commissioner for Human Rights as they further weaken basic guarantees for persons in need of protection and introduces a set of provisions that can lead to arbitrary detention of asylum seekers and third country nationals.

Following an increasing number of cases of alleged pushbacks at the Greek-Turkish border of Evros during the previous years, allegations of pushbacks were also reported during 2019. In September 2019, the UN Committee Against Torture noted in its concluding observations that “[t]he Committee is seriously concerned by consistent reports that the State party may have acted in breach of the principle of non-refoulement during the period under review”. In particular since 2020, these allegations do not only refer to push back at the land borders with Turkey (Evros) but also at the Aegean Sea. The CoE Commissioner for Human Rights thus stated on 3 March 2020: “I am alarmed by reports that some people in distress have not been rescued, while others have been pushed back or endangered”.

### *Asylum procedure*

- ❖ **Operation of the Asylum Service:** At the end of 2019, the Asylum Service operated in 25 locations throughout the country, compared to 23 locations at the end of 2018. The recognition rate at first instance in 2019 was 55.9%, up from 49.4% in 2018.
- ❖ **Access to the asylum procedure:** Without underestimating the number of applications lodged in 2019, access to asylum on the mainland continued to be problematic throughout 2019. Access to the asylum procedure for persons detained in pre-removal centres is also a matter of concern. Following tension erupted on the Greek-Turkish land borders at the end of February 2020, on 2 March 2020, the Greek Authorities issued an Emergency Legislative Order (*Πράξη Νομοθετικού Περιεχομένου/ΠΝΠ*) by which access to the asylum procedure had been suspended for persons entering the country during March 2020. According to the Emergency Legislative Order, those persons were about to be returned to their country of origin or transit 'without registration'. As noted by several actors, *inter alia* by UNHCR, "[a]ll States have a right to control their borders and manage irregular movements, but at the same time should refrain from the use of excessive or disproportionate force and maintain systems for handling asylum requests in an orderly manner. Neither the 1951 Convention Relating to the Status of Refugees nor EU refugee law provides any legal basis for the suspension of the reception of asylum applications". On 30 March 2020, following a legal action supported by the Greek Council for Refugees (GCR), the Council of State partially accepted the request for interim orders for two vulnerable individuals, subject to the suspension of access to asylum, and ordered the Authorities to refrain from any forcible removal, while it rejected the request in a third case.
- ❖ **Processing times:** The average processing time at first instance is reported at about 10.3 months in 2019, compared to 8.5 months in 2018. Out of the total number of 87,461 applications pending by the end of 2019, in 71,396 (81.6%) of the cases, the personal interview had not yet taken place. In 47,877 (67%) of these applications pending as of 31 December 2019, the interview is scheduled for the second semester of 2020 or even after 2020. This includes, for example, Fast-track Syria Unit applicants who receive interview appointments for 2021, applicants from Iraq and from African countries with interview dates scheduled for late 2023 and applicants from Turkey, Iran and Afghanistan with interview dates scheduled for 2024. Thus, given the number of the applications, the backlog of cases pending for prolonged periods is likely to increase, if the capacity of the Asylum Service is not further increased.
- ❖ **First instance procedure:** The IPA foresees an extended list of cases in which an application for international protection can be rejected as "manifestly unfounded" without any in-merits examination and without assessing the risk of *refoulement*, even in case that the applicant did not manage to comply with (hard to meet) procedural requirements and formalities. In addition, the IPA introduced the possibility of a 'fictitious service' (*πλασματική επίδοση*) of first instance decisions, with a registered letter to the applicant or to the authorised lawyers, consultants, representatives or even the Head of the Regional Asylum Office/Independent Asylum Unit, where the application was submitted or the Head of the Reception or Accommodation Centre. Given that the deadline for lodging an appeal starts from the day following the (fictitious) service, this deadline may expire without the applicant being actually informed about the issuance of the decision, for reasons not attributable to the latter. As noted by the Greek Ombudsman, the provisions relating to this fictitious service effectively limit the access of asylum seekers to legal remedies.
- ❖ **Fast-track border procedure:** The EU-Turkey statement, adopted in March 2016 and initially described as "a temporary and extraordinary measure" continues to be implemented to those arrived by sea on the Aegean islands. The impact of the EU-Turkey statement has been *inter alia* a *de facto* dichotomy of the asylum procedures applied in Greece. Asylum seekers arriving after 20 March 2016 on the Greek islands are subject to a fast-track border procedure with limited guarantees. As

noted by the EU Fundamental Rights Agency (FRA) “almost three years of experience [of processing asylum claims in facilities at borders] in Greece shows, [that] this approach creates fundamental rights challenges that appear almost insurmountable”.

- ❖ **Legal assistance:** No state-funded free legal aid is provided at first instance, nor is there an obligation to provide it in law. A state-funded legal aid scheme in the appeal procedure on the basis of a list managed by the Asylum Service operates since September 2017. Despite this welcome development, the capacity of the second instance legal aid scheme remains limited and almost 2 out of 3 appellants do not benefit from free legal assistance at second instance. Out of a total of 15,378 appeals lodged in 2019, only 5,152 (33%) asylum seekers received free legal assistance under the state-funded legal aid scheme. This is a slight increase compared to 2018 (21.8%). These figures demonstrate “an administrative practice incompatible with Union law, when it is to some degree, of a consistent and general nature”. Compliance of the Greek authorities with their obligations under national legislation and the recast Asylum Procedures Directive should thus be further assessed.
- ❖ **Appeal:** Recognition rates at second instance remained low in 2019. Out of the total in-merits second instance decision issued in 2019, 5.93% resulted in the granting of international protection; 6.07% resulted in the granting of humanitarian protection and 87.9% resulted in a negative decision. Effective access to the second instance procedure has been restricted in practice severely by the 2019 legislative amendment (IPA). According to the IPA, an appeal against a first instance decision *inter alia* should be submitted in a written form (in Greek) and mention the “specific grounds” of the appeal. Otherwise, the appeal is rejected as inadmissible without any in-merits examination. Given the fact that said requisites can only be fulfilled with the assistance of a lawyer, and the significant shortcoming in the provision of free legal assistance under the free legal aid scheme, appeals procedures are practically non-accessible for the vast majority of applicants, in violation of Article 46 of the Directive 2013/32/EU and Article 47 of the EU Charter for Fundamental Rights. As stated by UNHCR, “[i]n some circumstances, it would be so difficult to appeal against a rejection that the right to an effective remedy enshrined in international and EU law, would be seriously compromised”. The IPA abolished the automatic suspensive effect for certain appeals, in particular those concerning applications rejected in the accelerated procedure or dismissed as inadmissible under certain grounds. A ‘fictitious service’ of the second instance decision is also foreseen by the IPA, which entails the risk that deadlines for judicial review have expired without the appellant having been actually informed about the issuance of the decision.
- ❖ **Dublin:** In 2019, Greece addressed 5,459 outgoing requests to other Member States under the Dublin Regulation. Within the same period, 2,416 outgoing requests were expressly accepted, 107 were implicitly accepted and 2,936 were rejected. Additional obstacles to family reunification continued to occur in 2019 due to practices adopted by a number of the receiving Member States, which may underestimate the right to family life. In 2019, Greece received, for the first time, more rejections than acceptances. In 2019, the Greek Dublin Unit received 12,718 incoming requests, coming predominantly from Germany (8,874), compared to 9,142 incoming requests in 2018. Of those, only 710 were accepted. In a number of cases domestic courts in different Member States have suspended Dublin transfers.
- ❖ **Relocation:** A number of agreements have been concluded throughout 2019 regarding the relocation of applicants from Greece to other European countries. In March 2019, the Greek and Portuguese authorities concluded a bilateral agreement to relocate 1,000 asylum seekers from Greece to Portugal by the end of the year. No further developments on this matter have been recorded throughout the year. In January 2020, the Alternate Minister for Migration Policy reiterated Portugal’s willingness to accept up to 1,000 asylum seekers and stated that Greece and Portugal have already been working on this project. In December 2019 the Greek and Serbian authorities reached an agreement for the relocation of 100 unaccompanied minors to Serbia. A new project for the relocation of 400 vulnerable asylum seekers to France has also been announced in January 2020, aiming at the

completion of the relocations by the summer. In March 2020, a number of EU Member States have accepted to relocate a number of 1,600 unaccompanied children from Greece. UNHCR, IOM and UNICEF, in a joint statement have urged “other EU Member States to also follow through on relocation pledges”. As underlined, “[t]he relocation efforts are humane, concrete demonstrations of European solidarity... there is a need to move beyond one-off relocation exercises and establish more predictable arrangements for relocation within the EU, for longer-term impact”.

- ❖ **Safe third country:** Since mid-2016, the same template decision is issued to dismiss claims of Syrians applicants as inadmissible on the basis that Turkey is a safe third country for them. Accordingly, negative first instance decisions qualifying Turkey as a safe third country for Syrians are not only identical and repetitive – failing to provide an individualised assessment – but also outdated insofar as they do not take into account developments after that period, such as the current legal framework in Turkey, including the derogation from the principle of *non-refoulement*. Second instance decisions issued by the Independent Appeals Committees for Syrian applicants systematically uphold the first instance inadmissibility decisions, if no vulnerability is identified or no ground in order for the case to be referred for humanitarian permission to stay is present. Contrary to the requirements of the recast Asylum Procedures Directive, no rules on the methodology by which the competent authorities satisfy themselves that the safe third country concept may be applied to a particular country or to a particular applicant is provided by national legislation (IPA). According to the IPA, “transit” as such through a third country in conjunction with specific circumstances may be considered as a valid ground in order to be considered that the applicant could reasonably return in this country. The compatibility of said provision with the EU acquis should be further assessed, in particular by taking into consideration the recent CJEU case law (C924/19 PPU and C-925/19 PPU).
- ❖ **Identification of vulnerability:** Major delays occur in the identification of vulnerability on the islands, due to significant lack of qualified staff, which in turn also affects the asylum procedure. The average time between the arrival of the persons and the completion of the medical/psychosocial examination/vulnerability assessment on islands’ RICs was between 1 and 8 months in 2019, depending on the location. The regulatory framework for the guardianship of unaccompanied children initially introduced in 2018 was still not operational as of May 2020.

#### *Reception conditions*

- ❖ **Freedom of movement:** Asylum seekers subject to the EU-Turkey statement are issued a geographical restriction, ordering them not to leave the respective island until the end of the asylum procedure. The practice of geographical restriction has led to a significant overcrowding of the facilities on the islands and thus to the deterioration of reception conditions. In 2018, following an action brought by GCR, the Council of State annulled the Decision of the Director of the Asylum Service regarding the imposition of the geographical limitation. However, following a new Decision of the Director of the Asylum Service, the geographical restriction on the Eastern Aegean islands has been reintroduced. Legal action filed against the new Decision for the geographical limitation by GCR before the Council of State was still pending as of May 2020. A new regulatory framework for the geographical restriction on the islands entered into force in January 2020, which has significantly limited the categories of applicants for whom the restriction can be lifted. Thus, the implementation of the latter can increase the number of applicants remaining on the Greek islands and further deteriorate the conditions there.
- ❖ **Reception capacity:** Most temporary camps on the mainland, initially created as emergency accommodation facilities continued to operate throughout 2019, without a clear legal basis or official site management. The required Ministerial Decision for the establishment of the Temporary accommodation facilities has been issued in March 2020. In December 2019, a number of 24,110 persons were accommodated in mainland camps. Additionally, 21,620 people were accommodated under the UNHCR accommodation scheme (ESTIA) in December 2019, 6,822 of whom were

recognised refugees and 14,798 were asylum seekers. The occupancy rate of the scheme was 98%. Respectively, as of 31 December 2019, there were 5,301 unaccompanied and separated children in Greece but only 1,286 places in long-term dedicated accommodation facilities, and 748 places in temporary accommodation. On the Eastern Aegean islands, the nominal capacity of reception facilities, including RIC and other facilities, was at 8,125 places as of 31 December 2019; while a total of 41,899 newly arrived persons remained there. The nominal capacity of the RIC facilities (hotspots) was 6,178 as of December 2019, compared to 6,438 in December 2018. 38,423 applicants remained at the RIC facilities on the islands under a geographical restriction, in December 2019, compared to 11,683 in December 2018. Compliance of the Greek authorities with their obligations under the recast Reception Conditions Directive should be assessed against the total number of persons with pending asylum applications, i.e. 87,461 applications pending at first instance and about 14,547 appeals pending before Appeals Committees, at the end of 2019.

- ❖ **Living conditions:** As it has been widely documented, reception facilities on the islands remain substandard. Overcrowding, a lack of basic services, including medical care, limited sanitary facilities, and violence and lack of security poses significant protection risks. The mental health of the applicants on the islands is aggravating. As stressed by the Council of Europe Commissioner for Human Rights in October 2019, “[t]he situation of migrants, including asylum seekers, in the Greek Aegean islands has dramatically worsened over the past 12 months. Urgent measures are needed to address the desperate conditions in which thousands of human beings are living”. In February 2020, the UN High Commissioner for Refugees “called for urgent action to address the increasingly desperate situation of refugees and migrants in reception centres in the Aegean islands”. The High Commissioner underlined that “[c]onditions on the islands are shocking and shameful”. On the mainland, even if the capacity in sites has increased, the shortage of accommodation countrywide is increasingly leading to the overcrowding of many mainland camps, creating tension and increasing protection risks for the residents. Moreover, some continue to operate below standards provided under EU and national law, especially for long-term living. Main gaps relate to the remote and isolated location, the type of shelter, lack of security, and limitations in access to social services, especially for persons with specific needs and children.

#### *Detention of asylum seekers*

- ❖ **Statistics:** The total number of third-country nationals detained during 2019 was 30,007, out of which 23,348 were asylum seekers. The total number of persons detained at the end of 2019 was 3,869. Of these, 1,021 persons (26.3%) were detained in police stations. Furthermore, at the end of 2019, 195 unaccompanied children were in detention (“protective custody”) across the country.
- ❖ **Detention facilities:** There were 8 active pre-removal detention facilities (PRDF) in Greece at the end of 2019. Police stations continued to be used for prolonged immigration detention.
- ❖ **Amendments to the legal framework on detention:** The IPA introduced extensive provisions for the detention of asylum seekers and significantly lowered guarantees regarding the imposition of detention measures against asylum applicants, threatening to undermine the principle that detention of asylum seekers should only be applied exceptionally and as a measure of last resort. *Inter alia* the IPA increases the maximum time limit for the detention of asylum seekers to 18 months and additionally provides that the period of detention on the basis of return or deportation procedures is not calculated in the total time of detention, and thus the total detention period of a third country national within the migration context may reach 36 months (18 months while the asylum procedure + 18 months in view of removal).
- ❖ **Detention of vulnerable persons:** Persons belonging to vulnerable groups are detained in practice, without a proper identification of vulnerability and individualised assessment prior to the issuance of a detention order. Due to the lack of accommodation facilities or transit facilities for children, detention



of unaccompanied children is systematically imposed and may be prolonged for periods. During 2019, both the European Court of Human Rights and the European Committee of Social Rights have ordered the Greek authorities to immediately halt the detention of unaccompanied children and transfer them in age-appropriate reception facilities.

- ❖ **Detention conditions:** In many cases, the conditions of detention in pre-removal centres fail to meet adequate standards, *inter alia* due to their carceral and prison-like design. Police stations and other police facilities, which are not suitable for detention exceeding 24 hours by nature, continue to fall short of basic standards. Overall, available medical services provided in pre-removal centres are inadequate compared to the needs observed. At the end of 2019, there were only four doctors in total in the PRDFs across the country (1 in **Amygdaleza**, 1 in **Korinthos**, 1 in **Xanthi** and 1 in **Fylakio**). No doctor was present in **Tavros** and **Paranesti** PRDF on the mainland. On the Eastern Aegean islands PRDFs (**Lesvos** PRDF and **Kos** PRDF), i.e. where persons are detained *inter alia* in order to be subject to readmission within the framework of the EU-Turkey Statement, there was no doctor, interpreter or psychiatrist present as of the end of 2019. Medical services are not provided in police stations.
- ❖ **Legal Remedies against Detention:** The ability for detained persons to challenge detention orders is severely restricted in practice due to gaps in the provision of interpretation and a lack of free legal aid, resulting in the lack of access to judicial remedies against detention decisions. Limited judicial control regarding the lawfulness and the conditions of detention remains a long-lasting matter of concern.

#### *Content of international protection*

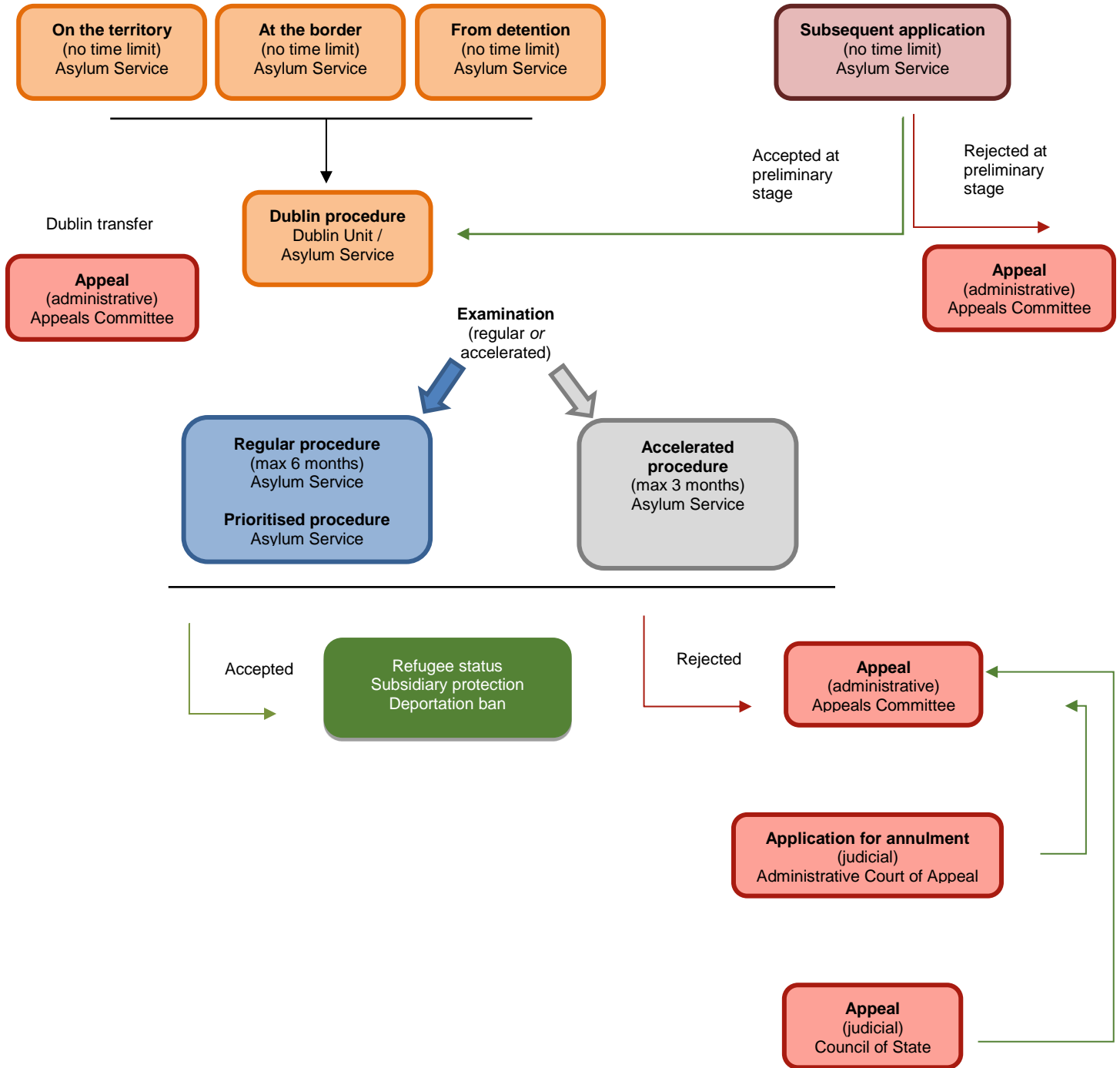
- ❖ **Family reunification:** Administrative obstacles, in particular for the issuance of visas even in cases where the application for family reunification has been accepted, continue to hinder the effective exercise of the right to family reunification for refugees. In 2019, 266 applications for family reunification were submitted at the Asylum Service. The Asylum Service took 22 positive decisions, 2 partially positive decisions and 29 negative decisions.
- ❖ **Naturalization:** Following an amendment of the Citizenship Code in March 2020, the minimum period of lawful residence required for submitting an application for citizenship in the case of recognised refugees has been increased from 3 to 7 years, despite the legal obligation of the Greek Authorities under Article 34 of the Geneva Convention 1951 to “facilitate the assimilation and naturalisation of refugees” and “in particular make every effort to expedite naturalisation proceedings”.
- ❖ **Housing of recognised refugees:** Following an amendment to the asylum legislation in early March 2020, beneficiaries of international protection residing in accommodation facilities must leave these centres within a 30-days period after the granting of international protection. As regards unaccompanied minors, they must also comply with that 30-days deadline once they reach the age of majority. Given the limited integration of recognised beneficiaries of international protection in Greece, this results in a high risk of homelessness and destitution.

# Asylum Procedure

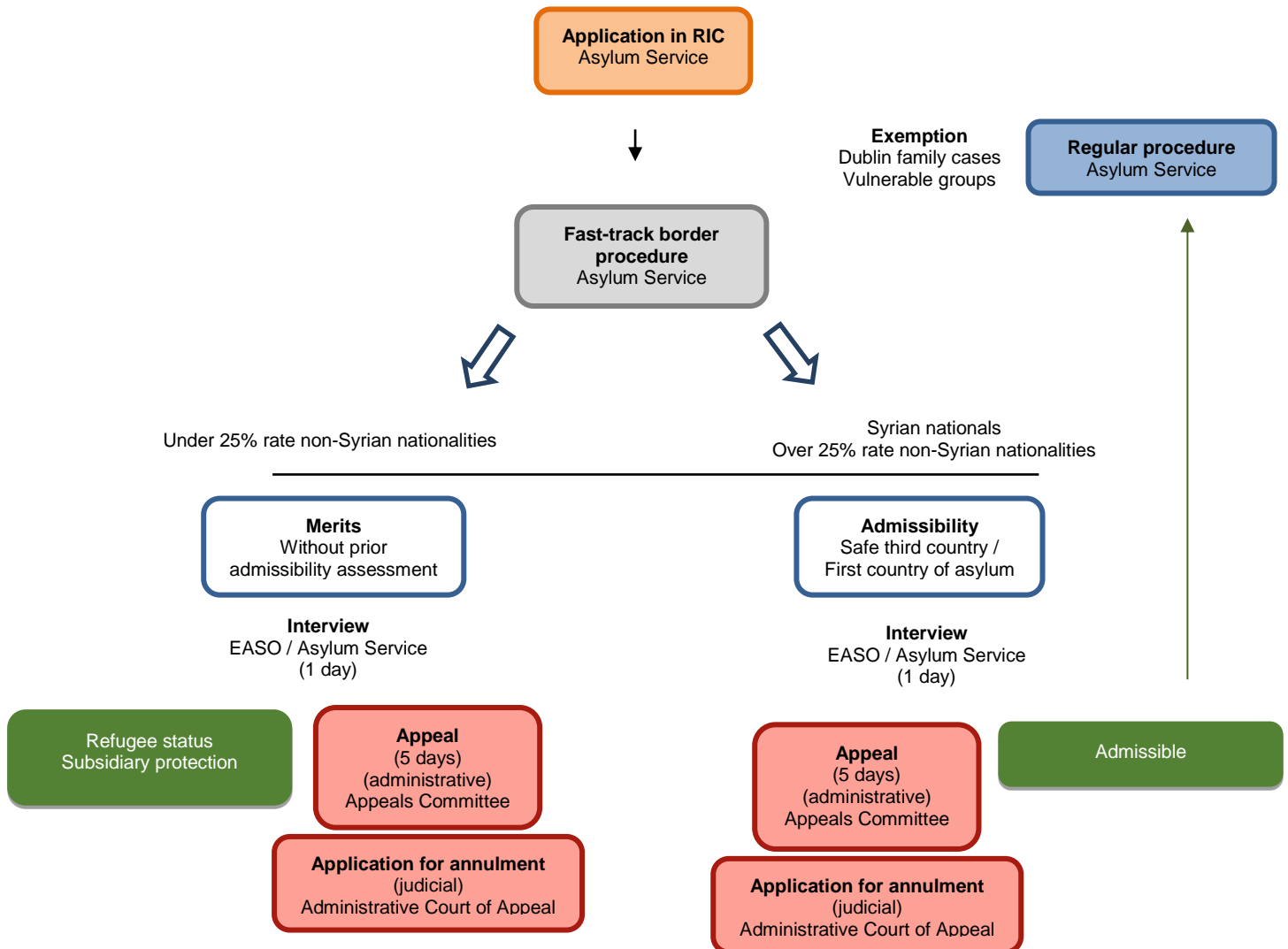
## A. General

### 1. Flow chart

#### 1.1. Applications not subject to the EU-Turkey statement



## 1.2. Fast-track border procedure: Applications on the Eastern Aegean islands subject to the EU-Turkey statement



The procedure is also outlined in a flowchart published by the Asylum Service: <http://bit.ly/2GGBkHR>.

## 2. Types of procedures

### Indicators: Types of Procedures

Which types of procedures exist in your country?

- |   |   |                             |
|---|---|-----------------------------|
| ❖ Regular procedure:                    | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Prioritised examination: <sup>2</sup> | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Fast-track processing: <sup>3</sup>   | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Dublin procedure:                     | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Admissibility procedure:              | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Border procedure:                     | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Accelerated procedure: <sup>4</sup>   | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Other:                                |   |                             |

Are any of the procedures that are foreseen in national legislation, not being applied in practice? If so, which one(s)?  Yes  No

## 3. List of authorities intervening in each stage of the procedure

Stage of the procedure	Competent authority (EN)	Competent authority (GR)
Application ❖ At the border ❖ On the territory	Asylum Service Asylum Service	Υπηρεσία Ασύλου Υπηρεσία Ασύλου
Dublin (responsibility assessment)	Asylum Service	Υπηρεσία Ασύλου
Refugee status determination	Asylum Service	Υπηρεσία Ασύλου
Appeal ❖ First appeal  ❖ Second (onward) appeal	Independent Appeals Committees (Appeals Authority) Administrative Court of Appeal	Ανεξάρτητες Επιτροπές Προσφυγών (Αρχή Προσφυγών) Διοικητικό Εφετείο
Subsequent application (admissibility)	Asylum Service	Υπηρεσία Ασύλου

The European Asylum Support Office (EASO) was also involved at different stages of the procedure, as will be explained further below.

<sup>2</sup> For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) recast Asylum Procedures Directive.

<sup>3</sup> Accelerating the processing of specific caseloads as part of the regular procedure; “Fast-track processing” is not foreseen in the national legislation as such. The Asylum Service implements since September 2014 a fast-track processing of applications lodged by Syrian nationals, provided that they are holders of a national passport or ID and lodge an asylum claim for the first time. Under this procedure asylum claims are registered and decisions are issued on the same day.

<sup>4</sup> Labelled as “accelerated procedure” in national law. See Article 31(8) recast Asylum Procedures Directive.

#### 4. Determining authority

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision-making in individual cases by the determining authority? <sup>5</sup>
Asylum Service EASO	886 Not available	Ministry on Migration and Asylum	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Source: Asylum Service, 20 February 2020.

The Asylum Service is responsible for examining applications for international protection and competent to take decisions at first instance. The responsibility for the Asylum Service has shifted several times to different Ministries in 2019 and early 2020.

In July 2019, the Ministry for Migration Policy, which used to be responsible for the Asylum Service, was subsumed under the Ministry of Citizen Protection.<sup>6</sup> The latter is primarily responsible for internal security, public order, natural disasters and border security. This institutional reform led to strong criticism from civil society organisations, who raised concerns with regard to the fact that asylum and migration would no longer be treated as a separate portfolio, as was the case under the previous Ministry of Migration Policy.<sup>7</sup> The latter had been established in 2016 specifically with the aim to centralize all activities and policies on asylum and migration, which had been welcomed by several international actors.<sup>8</sup> NGOs had further expressed their fear that allocating the responsibility for asylum to a Ministry primarily in charge of public order and security-related issues would contribute to stigmatize asylum seekers and thus reinforce racist behaviors against them.<sup>9</sup>

However, on 15 January 2020, a new Ministry on Migration and Asylum was (re)established. The latter is since then responsible for the Asylum Service.

##### 4.1. Staffing and capacity

###### Asylum Service

PD 104/2012, as modified by L 4375/2016, provides for Regional Asylum Offices (RAO) to be set up in Attica, Thessaloniki, Thrace, Epirus, Thessaly, Western Greece, Crete, Lesvos, Chios, Samos, Leros and

<sup>5</sup> No relevant information has come to the attention of GCR as regards the first instance. Pressure on the Greek asylum system is reported from the European Commission in relation to the implementation of the EU-Turkey Statement, as for example to abolish the existing exemptions from the fast-track border procedure and to reduce the number of asylum seekers identified as vulnerable.

<sup>6</sup> Article 2 Greek Presidential Decree 81/2019, 8 July 2019, available in Greek at: <https://bit.ly/2kl2wQ5>.

<sup>7</sup> Campaign for access to asylum, 'Ξανά το Άσυλο και η Μετανάστευση στο Υπουργείο Προστασίας του Πολίτη - Μια θεσμική οπισθοδρόμηση', 18 July 2019, available in Greek at: <https://bit.ly/2N12VIR>.

<sup>8</sup> Council of Europe, Decisions adopted by the Committee of Ministers – Compilation 2014-2017, available at: <https://bit.ly/2kkwqcG>, 269; European Commission, Commission Regulation of 10.2.2016 addressed to the Hellenic Republic on the urgent measures to be taken by Greece in view of the resumption of transfers under Regulation (EU) No. 604/2013, 10 February 2016, available at: <https://bit.ly/2m1NGE0>, para 13; Office of the United Nations High Commissioner for Human Rights (OHCHR), Full text of the press statement delivered by the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance M. Mutuma Ruteere on 8 May 2015 in Athens, Greece, 8 May 2015, available at: <https://bit.ly/2m3f708>.

<sup>9</sup> Campaign for access to asylum, 'Ξανά το Άσυλο και η Μετανάστευση στο Υπουργείο Προστασίας του Πολίτη - Μια θεσμική οπισθοδρόμηση', 18 July 2019, available in Greek at: <https://bit.ly/2N12VIR>.

Rhodes. It is possible to establish more than one Regional Asylum Office per region by way of Ministerial Decision for the purpose of covering the needs of the Asylum Service.<sup>10</sup>

At the end of 2019, the Asylum Service operated in 25 locations throughout the country, compared to 23 locations at the end of 2018, 22 locations at the end of 2017 and 17 locations at the end of 2016.<sup>11</sup> A new Regional Asylum Office (RAO) and an Autonomous Asylum Unit (AAU) in **Nikaia**, Attika Region started operating mid-November 2019.<sup>12</sup>

13 RAO and 12 AAU were operational as of 31 December 2019:

Operation of Regional Asylum Offices and Autonomous Asylum Units: 2019		
Regional Asylum Office	Start of operation	Registrations 2019
Attica	Jun 2013	7,988
Thrace	Jul 2013	2,331
Lesvos	Oct 2013	22,252
Rhodes	Jan 2014	682
Patra	Jun 2014	814
Thessaloniki	Jul 2015	7,387
Samos	Jan 2016	8,043
Chios	Feb 2016	5,374
Leros	Mar 2016	3,814
Alimos	Sep 2016	3,080
Piraeus	Sep 2016	2,579
Crete	Dec 2016	666
Nikaia	Sep 2017	-
Autonomous Asylum Unit	Start of operation	Registrations 2019
Fylakio	Jul 2013	3,756
Amygdaleza	Sep 2013	2,130
Xanthi	Nov 2014	1,324
Kos	Jun 2016	2,342
Corinth	Aug 2016	2,058
Fast-Track Syria (Attica)	Nov 2016	-
Applications from Pakistan	Dec 2016	-
Applications from Albania and Georgia	Mar 2017	-
Beneficiaries of international protection	Jun 2017	-
Applications from custody	Jun 2017	-
Ioannina	Mar 2018	667
Nikaia	Nov 2019	-

Source: Asylum Service. Applications lodged in **Attica** include applications lodged before the AAU for applications from Pakistan, the AAU Fast-Track Syria and the AAU Applications from custody. Applications lodged in **Thessaloniki** include applications lodged before the AAU for applications from Georgia and Albania.

<sup>10</sup> Article 1(3) L 4375/2016.

<sup>11</sup> Information provided by the Asylum Service, 17 February 2020; Information provided by the Asylum Service, 26 March 2019; Asylum Service, 'The work of the Asylum Service in 2017', 25 January 2018, available at: <http://bit.ly/2BsCDGd>.

<sup>12</sup> Ministerial Decision 14715, Gov. Gazette B' 3264/01.09.2017 and Asylum Service Director Decision 28162, Gov. Gazette B' 4265/21.11.2019.

The number of employees of the Asylum Service at the end of 2019, distributed across the Central Asylum Service, RAO and AAU, was 886, compared to 679 at the end of 2018 and 515 at the end of 2017. The total number of staff of the Asylum Service includes 318 permanent employees and employees on indefinite term contracts, 22 employees of other Public Sector Authorities on secondment and 546 staff members on fixed-term contracts. 200 officials were hired in 2019 all of which on fixed-term contracts. A further 220 employees on fixed-term contracts are expected to be recruited in the first semester of 2020.<sup>13</sup>

No information regarding the distribution of Asylum Service staff by RAO or AAU in 2019 has been made available on the grounds that the constant changes made its determination difficult.<sup>14</sup>

The short-term working status of almost two thirds of the total number of the employees of the Asylum Service staff, coupled with the precarious working environment for employees, arises concerns and may create problems in the operation of the Asylum Service.

## EASO

In April 2016, the law introduced the possibility for the Asylum Service to be assisted by European Asylum Support Office (EASO) personnel “exceptionally” and “in case where third-country nationals or stateless persons arrive in large numbers”, within the framework of the [Fast-Track Border Procedure](#).<sup>15</sup> By a subsequent amendment in June 2016, national legislation explicitly provided the possibility for the asylum interview within that procedure to be conducted by an EASO caseworker.<sup>16</sup> The IPA has maintained this option, and has inserted the possibility for fast-track border procedure and admissibility interviews to be conducted by personnel of the Hellenic Police or the Armed Forces in particularly urgent circumstances.<sup>17</sup>

Since May 2018, Greek-speaking EASO personnel can also assist the Asylum Service in the [Regular Procedure](#). The law provides that in case of urgent need, EASO personnel can carry out any administrative procedure needed for processing applications.<sup>18</sup> EASO caseworkers have conducted interviews under the regular procedure since the end of August 2018.<sup>19</sup>

The number of EASO staff in the course of 2019 cannot be precisely determined due to its changes and discrepancies through the year. The number of the EASO staff deployed on the 5 eastern Aegean islands which have a RIC (**Lesvos, Chios, Samos, Kos, Leros**) has been between 173 and 261 employees, while the number of the EASO staff working on the mainland has been between 89 and 102 employees. Moreover, by the end of 2019, EASO had deployed 9 Dublin experts and 4 administrative personnel at the Greek National Dublin Unit.

Following the signature of the Seat Agreement for the Hosting of the EASO Operational Office in Greece on 28 January 2020, EASO announced that the Agency’s operations in Greece are expected to double in size to over 1,000 personnel in 2020.<sup>20</sup> Within this increase, the operational presence on the Greek mainland will increase by four times the level of 2019, including personnel being permanently deployed to eight new locations in **Thessaloniki** and **Ioannina** to support the country’s regular asylum procedure. At the same time, the number of caseworkers will double on the islands (from approximately 100 to 200)

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<sup>13</sup> Information provided by the Asylum Service, 17 February 2020.

<sup>14</sup> Information provided by the Asylum Service, 17 February 2020.

<sup>15</sup> Article 60(4)(b) L 4375/2016.

<sup>16</sup> Article 60(4)(b) L 4375/2016, as amended by Article 80(13) L 4399/2016.

<sup>17</sup> Articles 77(1) and 90(3)(b) IPA.

<sup>18</sup> Article 36(11) L 4375/2016, inserted by Article 28(7) L 4540/2018; Article 65(16) IPA.

<sup>19</sup> Information provided by EASO, 13 February 2019.

<sup>20</sup> EASO, ‘EASO operations in Greece to expand significantly’, 28 January 2020, available at: <https://bit.ly/3cMwXu5>.

and triple on the mainland (from approximately 30 to 100). EASO's operations in Greece in 2020 will translate to a financial commitment of at least €36 million.<sup>21</sup>

The agreement foresees that EASO staff will support the Greek Asylum Service, the national Dublin Unit, the Reception and Identification Service and the Appeals Authority. The personnel will include caseworkers, field support staff, reception staff, research officers for the Appeals Authority, interpreters and administrative staff. Moreover, on 12 May 2020, EASO and the Greek Government agreed to an amendment to the Greek Operating Plan, which allows for the Agency to facilitate the relocation of 1,600 unaccompanied children from Greece to participating Member States in the relocation scheme.<sup>22</sup>

As regards previous involvement of the EASO personnel in the national asylum procedure in Greece, the European Ombudsman has highlighted that:

“In light of the Statement of the European Council of 23 April 2015[25] (Point P), in which the European Council commits to ‘deploy EASO teams in frontline Member States for joint processing of asylum applications, including registration and finger-printing’, EASO is being encouraged politically to act in a way which is, arguably, not in line with its existing statutory role. Article 2(6) of EASO's founding Regulation (which should be read in the light of Recital 14 thereof, which speaks of “direct or indirect powers”) reads: ‘The Support Office shall have no powers in relation to the taking of decisions by Member States' asylum authorities on individual applications for international protection’.”<sup>23</sup>

No amendment of the EASO Regulation has taken place up until to the time of the writing.

Despite the growth of the Asylum Service in particular since 2016, its capacity should be further monitored, given that the number of applications submitted before the Asylum Service remained significantly high. The additional pressure on the Asylum Service to accelerate the asylum procedure may undermine the quality of first instance decisions, which in turn would prolong the overall length of procedure, as more work would be shifted to the appeals stage.<sup>24</sup>

In 2019, the number of claims lodged before the Asylum Service rose by 15.4%; i.e. 77,287 in 2019 compared to 66,969 in 2018. By the end of 2019, a total of 87,461 applications were still pending (see [Regular Procedure](#)).

## 4.2. Training

Caseworkers of the Asylum Service responsible for examining applications and issuing decisions on asylum applications hold a degree in Law, Political Science or Humanities. Newly recruited staff has undergone an introductory training on the following topics: “Human Rights, Refugee Law and Greek Asylum Procedure”, “Management of the Asylum Service database”, “Cooperation with Interpreters”, “Health and Safety Conditions of personnel”, “E-Data Protection”.

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<sup>21</sup> Ibid.

<sup>22</sup> EASO, ‘EASO facilitating relocation of Unaccompanied Minors from Greece’, 13 May 2020, available at: <https://bit.ly/3cNd99U>.

<sup>23</sup> European Ombudsman, *Decision in case 735/2017/MDC on the European Asylum Support Office's' (EASO) involvement in the decision-making process concerning admissibility of applications for international protection submitted in the Greek Hotspots, in particular shortcomings in admissibility interviews*, available at: <https://bit.ly/2XVUfXq>, para 33. The Decision of the European Ombudsman refers to the EASO involvement in the fast-track border procedure, however this finding is also valid with regard to EASO involvement in the regular procedure.

<sup>24</sup> FRA, *Update of the 2016 FRA Opinion on fundamental rights in the hotspots set up in Greece and Italy*, 4 March 2019, available at: <https://bit.ly/2HeRg79>, 26.



In addition, during 2019 a number of staff participated in trainings through an electronic platform and seminars which were also conducted based on the EASO materials on the following topics: “Refugee Status Determinations”, “Interview techniques”, “Assessment of evidence”, “Country of Origin Information”, “CEAS”, “Effective Administration” and “Exclusion from International Protection”. Regular trainings (“refreshers”) have also been conducted in 2019 for a number of staff of the Asylum Service, as well as trainings with regards the “Exclusion” and “Statelessness” in collaboration with UNHCR.

Moreover, the Asylum Service’s staff had the opportunity to participate in specialised seminars on other topics conducted by the UNHCR or other actors. Lastly, the Asylum Service offered seminars and training dedicated on the Service’s Standard Operating Procedures (SOPs) and Guidelines.<sup>25</sup>

Trainings have also been conducted to EASO staff involved in the fast-track border procedure and the regular procedure, *inter alia* regarding the national procedures in which EASO staff participate. These trainings are conducted by Asylum Service staff in collaboration with EASO.<sup>26</sup>

## 5. Short overview of the asylum procedure

The asylum procedure in Greece has undergone substantial reforms throughout 2016, many of which driven by the adoption of the EU-Turkey statement on 18 March 2016. The adoption of Law (L) 4375/2016 in April 2016 and its subsequent amendments in June 2016 have overhauled the procedure before the Asylum Service. Provisions of L 4375/2016 related *inter alia* to the implementation of the EU-Turkey statement were re-amended in March 2017, August 2017 and May 2018.

Following the July 2019 elections, the new government announced a more restrictive policy on migration and asylum, with a view to reduce the number of arrivals, increase the number of returns to Turkey and strengthen border control measures.<sup>27</sup> As a result, national asylum legislation has been radically re-amended in November 2019. L. 4636/2019 (hereinafter International Protection Act/IPA), which was adopted on 1 November 2019 without any significant prior consultation, entered into force on 1 January 2020 and replaced the previous legislation on asylum and reception.

The IPA has been repeatedly and heavily criticised by national and international human rights bodies including the Greek Ombudsman,<sup>28</sup> the Greek National Commission for Human Rights (GNCHR),<sup>29</sup> UNHCR<sup>30</sup> and several civil society organisations<sup>31</sup>. It has been categorised *inter alia* as an attempt to lower protection standards and create unwarranted procedural and substantive hurdles for people seeking international protection. As noted by UNHCR, the new Law reduces safeguards for people seeking international protection and creates additional pressure on the overstretched capacity of administrative and judicial authorities. “The proposed changes will endanger people who need international

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<sup>25</sup> Information provided by the Asylum Service, 17 February 2020.

<sup>26</sup> *Ibid.*

<sup>27</sup> Amnesty International, *Annual Report 2019*, Greece, available at: <https://bit.ly/2LDT5L6>.

<sup>28</sup> Greek Ombudsman, *Παρατηρήσεις στο σχέδιο νόμου του Υπουργείου Προστασίας του Πολίτη περί διεθνούς προστασίας*, 23 October 2019, available in Greek at: <https://bit.ly/2LAXCCH>.

<sup>29</sup> GNCHR, *Παρατηρήσεις της ΕΕΔΑ στο Σχέδιο Νόμου του Υπουργείου Προστασίας του Πολίτη «Περί Διεθνούς Προστασίας»*, 24 October 2019, available in Greek at: <https://bit.ly/3clUBYa>.

<sup>30</sup> UNHCR, ‘UNHCR urges Greece to strengthen safeguards in draft asylum law’, 24 October 2019, available at: <https://bit.ly/3fXkm9j>.

<sup>31</sup> See *inter alia* GCR, *Observation on the draft law on international protection*, 23 October 2019, available at: <https://bit.ly/3clFluD>; Amnesty International, *Το προτεινόμενο σχέδιο νόμου για το άσυλο υποβαθμίζει την προστασία και τα δικαιώματα των προσφύγων και παραβιάζει τα διεθνή πρότυπα*, 24 October 2019, available at: <https://bit.ly/3dWduqV>; Refugee Support Aegean, *RSA Comments on the International Protection Bill, 21 October 2019*, available at: <https://bit.ly/2LCfJU7>; Actionaid Greece et al, 15 civil society organisations call upon the Government to organise a substantial public consultation prior of voting the draft law on asylum, 31 October 2019, <https://bit.ly/2Zf4tFe>; Amnesty International et al., *Joint press conference regarding the draft law on asylum*, 30 October 2019, available at: <https://bit.ly/3bDUgVr>.

protection[...] [the law] puts an excessive burden on asylum seekers and focuses on punitive measures. It introduces tough requirements that an asylum seeker could not reasonably be expected to fulfil”<sup>32</sup> [...] “As a result, asylum seekers may be easily excluded from the process without having their international protection needs adequately assessed. This may expose them to the risk of refoulement”.<sup>33</sup>

Four months after the entry into force of the new law L.4636/2019 (IPA) on 1 January 2020, the Ministry of Migration and Asylum submitted on 10 April 2020, a bill entitled “Improvement of migration legislation”, aiming at speeding up asylum procedures and at “responding to practical challenges in the implementation of the law”. It was submitted for public consultation amid a public health crisis. The proposed amendment further weakens basic guarantees for persons in need of protection. *Inter alia*, the draft law increases the number of applications which can be rejected as manifestly unfounded and introduces a set of provisions that can lead to arbitrary detention of asylum seekers and third country nationals.<sup>34</sup> The draft law has been adopted by the Parliament on 9 May 2020,<sup>35</sup> despite concerns of human rights bodies, including the Council of Europe Commissioner for Human Rights and civil society organizations.<sup>36</sup>

### First instance procedure

Asylum applications are lodged before the Asylum Service. Thirteen Regional Asylum Offices and twelve Asylum Units were operational at the end of 2019. The Asylum Service is also competent for applying the **Dublin procedure**, with most requests and transfers concerning family reunification in other Member States. The Asylum Service may be assisted by European Asylum Support Office (EASO) staff in registration and interviews. Access to the asylum procedure still remains an issue of concern.

A **fast-track border procedure** is applied to applicants subject to the EU-Turkey statement, i.e. applicants arriving on the islands of Eastern Aegean islands after 20 March 2016, and takes place in the Reception and Identification Centres (RIC) where hotspots are established (Lesvos, Chios, Samos, Leros, Kos) and before the RAO of Rhodes. Under the fast-track border procedure, *inter alia*, interviews may also be conducted by EASO staff and, in urgent cases, the Police and Armed Forces. Short deadlines are provided to applicants for most steps of the procedure. The concept of “safe third country” is applied within the framework of this procedure for applicants belonging to a nationality with a recognition rate over 25%, namely Syrians.

### Appeal

First instance decisions of the Asylum Service are appealed before the Independent Appeals Committees under the Appeals Authority. An appeal must be lodged within 30 days in the regular procedure, 20 days in the accelerated procedure, in case of an inadmissibility decision or where the applicant is detained, 15 days in the Dublin procedure, 7 days in the border procedure, and 10 days in the fast-track border procedure and 5 days in the case of a subsequent application.

The IPA has abolished the rule of automatic suspensive effect for certain appeals, in particular those concerning applications rejected in the accelerated procedure or dismissed as inadmissible under certain

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<sup>32</sup> UNHCR, ‘UNHCR urges Greece to strengthen safeguards in draft asylum law’, 24 October 2019, available at: <https://bit.ly/3fXkm9j>.

<sup>33</sup> UNHCR, ‘UNHCR’s Intervention at the hearing for actors to the Standing Committee of Public Administration, Public Order and Justice of the Hellenic Parliament regarding the Draft Law on the Improvement of Migration Legislation’, 9 May 2020, available at: <https://bit.ly/3dJEB8H>.

<sup>34</sup> Ibid; See also GCR, *GCR’s comments on the draft law amending asylum legislation*, 27 April 2020, available at: <https://bit.ly/2ywIMWv>; RSA, *Comments on the Reform of the International Protection Act*, 23 April 2020, available at: <https://bit.ly/2WrMwQR>.

<sup>35</sup> L. 4686/2020, Gov. Gazette A’ 96 /12 May 2020; Amendments introduced by L. 4686/2020 in May 2020 are not included in the present report.

<sup>36</sup> Council of Europe, Commissioner for Human rights, 7 May 2020, <https://bit.ly/2YY5PnS>.

grounds. Moreover, the IPA re-modified the composition of the Appeals Authorities. The procedure before the Appeals Committees remains as a rule written. Significant gaps in the provision of free legal aid at second instance hinder in practice the effective access to an appeal.

By the end of 2019, an application for annulment could be filed before the Administrative Court of Appeals against a negative second instance decision within 60 days from the notification. According to the IPA said legal remedies are lodged before the First Instance Administrative Court of Athens or Thessaloniki within a deadline of 30 days. No automatic suspensive effect is provided.

## B. Access to the procedure

### 1. Access to the territory and push backs

#### Indicators: Access to the Territory

1. Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs?  Yes  No
2. Is there a border monitoring system in place?  Yes  No

### Statistical overview

In 2019, 74,649 refugees and migrants arrived in Greece. This marks an increase of 48% compared to 2018 and further means that Greece alone received more arrivals than Spain, Italy, Malta and Cyprus combined (49,100).<sup>37</sup>

A total of 59,726 persons arrived in Greece by sea in 2019, compared to 32,494 in 2018. The majority originated from Afghanistan (40%), Syria (27.4%) and DRC (6.7%). More than half of the population were women (23%) and children (36%), while 41% were adult men.<sup>38</sup>

Moreover, 14,887 persons arrived in Greece through the Greek-Turkish land border of **Evros** in 2019, compared to a total of 18,014 in 2018, according to UNHCR.<sup>39</sup> According to police statistics, 8,497 arrests were carried out in 2019 for irregular entry on the Evros land border with Turkey,<sup>40</sup> compared to 15,154 arrests in 2018. According to the Reception and Identification Service (RIS), 14,257 persons were registered by the First Reception Service in the RIC of Fylakio (Evros) in 2019.<sup>41</sup>

However, the figure of entries through the Turkish land border in 2019 may under-represent the number of people actually attempting to enter Greece through Evros, given that cases of alleged pushbacks at the Greek-Turkish border have been systematically reported in 2019, as was the case in 2018.

According to these allegations, the Greek authorities in **Evros** continue to follow a pattern of arbitrary arrest of newly arrived persons entering the Greek territory from the Turkish land borders, *de facto* detention in police stations close to the borders (see [Grounds for Detention](#)), and transfer to the border, accompanied by the police, where they are pushed back to Turkey. These allegations also concern

<sup>37</sup> UNHCR, Europe Monthly Report, December 2019, available at: <https://bit.ly/3aKu5fF>; UNCHR, Operational Portal, Mediterranean Situation: Greece, available at: <https://bit.ly/3cOsJw8>.

<sup>38</sup> UNHCR, Sea Arrivals Dashboard, December 2019, available at: <https://bit.ly/3371krb>.

<sup>39</sup> UNHCR, Operational Portal, *ibid*.

<sup>40</sup> Information provided by the Directorate of the Hellenic Police, 8 February 2020.

<sup>41</sup> Information provided by Reception and Identification Service (RIS) as of 6 February 2020.

Turkish citizens, who have fled their country of origin and have been returned without having access to asylum.<sup>42</sup>

During 2019, 174 persons have been reported dead or missing at the Aegean Sea or the Evros border.<sup>43</sup>

The persisting practice of alleged pushbacks have been reported *inter alia* by UNHCR, the UN Working Group on Arbitrary Detention, the UN Committee against Torture, the Greek National Commission on Human Rights and civil society organisations.

By way of illustration, UNHCR stated in May 2019 that it “remains seriously concerned over continued allegations of ‘pushback’ (informal forced returns), which appear to affect hundreds of third-country nationals summarily returned without an effective opportunity to access procedures or seek asylum”.<sup>44</sup>

In September 2019, the UN Committee Against Torture, in its concluding observations on the seventh periodic report of Greece, noted that “[t]he Committee is seriously concerned at consistent reports that the State party may have acted in breach of the principle of non-refoulement during the period under review. In particular, the reports refer to repeated allegations of summary forced returns of asylum seekers and migrants, including Turkish nationals, intercepted at sea and at the land border with Turkey in the north-east of the Evros region, with no prior risk assessment of their personal circumstances. According to the information before the Committee, Greek law enforcement officers and other unidentified forces involved in pushback operations have often used violence and have confiscated and destroyed migrants’ belongings. While noting that the Division of Internal Affairs of the Hellenic Police and the Greek Ombudsman initiated investigations into the allegations in 2017, the Committee is concerned that these administrative investigations have not included the hearing of live evidence from alleged victims, witnesses and complainants”.<sup>45</sup>

In December 2019, after having received information on summary returns across the Greece-Turkey land border, the UN Working Group on Arbitrary Detention urged the Greek Authorities “to put an immediate end to pushbacks and to ensure that such practices, including any possible acts of violence or ill-treatment that has occurred during such incidents, are promptly and fully investigated”.<sup>46</sup>

Following allegation and reports regarding the alleged practices of pushbacks at the land borders in June 2017, the Greek Ombudsman initiated an *ex officio* investigation into the cases of alleged pushbacks. However, no final report has been made public up to May 2020.

Following reports published *inter alia* by three Greek NGOs, including GCR<sup>47</sup> and Human Rights Watch,<sup>48</sup> the Public Prosecutor of Orestiada (Evros) initiated an investigation in March 2019 regarding the repeated allegations of systematic violence against migrants and refugees at the Evros river.

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<sup>42</sup> GCR, Repeated complaints on pushbacks in Evros, 9 May 2019, available at: <https://bit.ly/2TZ2Gjx>.

<sup>43</sup> UNHCR, Operational Portal, *ibid*.

<sup>44</sup> UNHCR, Recommendations by the Office of the United Nations High Commissioner for Refugees (UNHCR) concerning the execution of judgments by the European Court of Human Rights (ECtHR) in the cases of M.S.S. v. Belgium and Greece (Application No. 30696/09, Grand Chamber judgment of 21 January 2011) and of Rahimi v. Greece (Application No. 8687/08, Chamber judgment of 05 April 2011), available at: <https://bit.ly/38JuVYG>.

<sup>45</sup> UN Committee Against Torture, Concluding Observations on the seventh periodic report of Greece, 3 September 2019, CAT/C/GRC/CO/7, available at: <https://bit.ly/2wKiqPm>.

<sup>46</sup> Working Group on Arbitrary Detention: Preliminary Findings from its visit to Greece (2 - 13 December 2019), available at: <https://bit.ly/38HPAfV>.

<sup>47</sup> GCR, Arsis and HumanRights360, The new normality: Continuous push-backs of third country nationals on the Evros river, December 2018, available at: <https://bit.ly/2DsFj9S>.

<sup>48</sup> CBC, Greek prosecutor investigating allegations of 'systematic' violence against migrants at Evros River, 6 March 2019, available at: <https://bit.ly/2TWUy2N>.

On 18 June 2019 GCR filed three complaints before the Prosecutor of First Instance of Athens, to be transmitted to the Prosecutor of Second Instance of Orestiada, concerning three separate incidents of alleged pushbacks during the period April-June 2019, representing 5 Turkish citizens, including one child. In May 2020 the three complaints were still at the stage of pre-trial investigation and their examination is pending in front of the competent authorities. On the same day GCR filed a report to the Prosecutor of the Supreme Court regarding incidents of pushbacks in the Evros region from April until June 2019.<sup>49</sup>

However, up until May 2020 and despite the recommendation *inter alia* of the UNCAT to “*enhance efforts to ensure the criminal accountability of perpetrators of acts that put the lives and safety of migrants and asylum seekers at risk*”<sup>50</sup> said procedures have not come to an end.

### Situation at the beginning of 2020

At the end of February 2020, thousands of persons, encouraged by the Turkish authorities have been moved to the Turkish-Greek land borders of Evros and have been trapped there, including vulnerable men, women and children, while violence rapidly escalated.<sup>51</sup> According to the Greek Authorities, between Saturday 29 February and Monday 2 March 2020, 24,203 attempts of irregular entry on the territory have been prevented.<sup>52</sup> Moreover, between Saturday 29 February and Sunday 8 March 2019, the prevention of 41,600 irregular entries has been reported.<sup>53</sup> Persons remaining on the Turkish side of the Greek Turkish land borders were removed by the end of March 2020.<sup>54</sup>

At the same time, an increasing number of pushbacks at the borders and the use of excessive force, including lethal force, were reported during that period.<sup>55</sup> These allegations were dismissed by the Greek authorities as “fake news”. In May 2020, a question has been filed by 122 Members of the European Parliament regarding the alleged death of a person who seems to have been shot at the border, as demonstrated by the findings of a joint research of the Forensic Architecture, Bellingcat and Lighthouse Reports and the SPIEGEL.<sup>56</sup>

A number of alleged pushbacks at the **Aegean Sea** have also been reported in particular in March 2020 and following tension at the Greek-Turkish land borders. As stated by the CoE Commissioner for Human Rights, on 3 March 2020,

“[r]egarding the situation in the Aegean Sea, I am alarmed by reports that some people in distress have not been rescued, while others have been pushed back or endangered. I recall that the

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<sup>49</sup> GCR, ‘GCR initiated legal action following the allegation of push backs in Evros’, 19 June 2019, available at: <https://bit.ly/2vbCutw>.

<sup>50</sup> UN Committee Against Torture, *ibid*.

<sup>51</sup> Council of Europe, Commissioner for Human Rights, Time to immediately act and to address humanitarian and protection needs of people trapped between Turkey and Greece, 3 March 2020, available at: <https://bit.ly/39Hm0sd>; see also UNHCR, *UNHCR statement on the situation at the Turkey-EU border*, 2 March 2020, available at: <https://bit.ly/2Q62sWN>; Greek National Commission for Human Rights, *Reviewing asylum and immigration policies and safeguarding human rights at the EU borders*, 5 March 2020, available at: <https://bit.ly/39HtXh3>; Open Letter of 120 organisations regarding the current developments at the Greek border, 4 March 2020 available at: <https://bit.ly/2vWgnrr>.

<sup>52</sup> Euronews, Έβρος: Περισσότερες από 24.000 αποτροπές εισόδου από το Σάββατο, 3 March 2020, available in Greek at: <https://bit.ly/2vNp7jJ>.

<sup>53</sup> Skai.gr, Έβρος: Εμποδίστηκε η παράνομη είσοδος σε πάνω από 41.000 άτομα, 8 March 2020, available in Greek at: <https://bit.ly/2U0tdga>.

<sup>54</sup> Έβρος : Αποχώρησαν το πρωί οι μετανάστες από το σημείο των επεισοδίων στις Καστανιές, 27 March 2020, available in Greek at: <https://bit.ly/3fJTlpJ>.

<sup>55</sup> The New York Times, We Are Like Animals’: Inside Greece’s Secret Site for Migrants, 10 March 2020, available at: <https://nyti.ms/2vhATm8>; EUobserver, Migrants claim being shot by Greek police, Athens denies, 5 March 2020, <https://bit.ly/3d2mJX1>.

<sup>56</sup> Web24news, ‘Shots at the Greek border: MEPs call for EU investigation’, 12 May 2020, available at: <https://bit.ly/3cu8BoK>.

protection of the lives of those in distress at sea is one of the most basic duties which must be upheld, and that collective expulsions constitute serious human rights violations”.<sup>57</sup>

On 6 March 2020, a Danish boat patrolling between Turkey and the Greek islands as part of the Frontex Operation Poseidon, has refused to push back rescued migrants at sea, despite orders to do so.<sup>58</sup>

An incising number of alleged pushbacks and illegal returns by sea to Turkey has further been reported since April 2020. According to some of these allegations, after reaching the Greek shore, people have reportedly been placed in life rafts and then left in Turkish territorial waters.<sup>59</sup>

## 2. Reception and identification procedure

### 2.1. The European Union policy framework: ‘hotspots’

The “hotspot approach” was first introduced in 2015 by the European Commission in the European Agenda on Migration as an initial response to the exceptional flows.<sup>60</sup> Its adoption was part of the immediate action to assist Member States, which were facing disproportionate migratory pressures at the EU’s external borders and was presented as a solidarity measure.

The initial objective of the “hotspot approach” was to assist Italy and Greece by providing comprehensive and targeted operational support, so that the latter could fulfill their obligations under EU law and swiftly identify, register and fingerprint incoming migrants, channel asylum seekers into asylum procedures, implement the relocation scheme and conduct return operations.<sup>61</sup>

For the achievement of this goal, EU Agencies, namely the EASO, Frontex, Europol and Eurojust, work alongside the Greek authorities within the context of the hotspots.<sup>62</sup> The hotspot approach was also expected to contribute to the implementation of the temporary relocation scheme, proposed by the European Commission in September 2015.<sup>63</sup> Therefore, hotspots were envisaged initially as reception and registration centres, where all stages of administrative procedures concerning newcomers – identification, reception, asylum procedure or return – would take place swiftly within their scope.

Five hotspots, under the legal form of First Reception Centres – now Reception and Identification Centres (RIC) – were inaugurated in Greece on the following islands:

Hotspot	Start of operation	Capacity	Occupancy
Lesvos	October 2015	2,840	18,615
Chios	February 2016	1,014	5,782
Samos	March 2016	648	7,765
Leros	March 2016	860	2,496
Kos	June 2016	816	3,765

<sup>57</sup> Council of Europe, Commissioner for Human Rights, *ibid.*

<sup>58</sup> Politico.eu, Danish boat in Aegean refused order to push back rescued migrants, 6 March 2020, available at: <https://politi.co/2IEYXSM>.

<sup>59</sup> Efsyn.gr, Επαναπροωθούν πρόσφυγες στα νησιά με ειδικές θαλάσσιες σκηνές, 7 April 2020; available in Greek at: <https://bit.ly/3e18X6q>; ECRE, ‘Greece: Still no Access to Asylum, Second Camp Quarantined, First Relocations Ahead, Push Backs to Turkey’, 9 April 2020, available at: <https://bit.ly/2Xahg9l>; Efsyn.gr, Ακόμα 30 πρόσφυγες «εξαφανίστηκαν» από τη Σάμο, 29 April 2020, available in Greek at: <https://bit.ly/3dZD6Du>; Aegean Boat Report, 5 May 2020, available at: <https://bit.ly/3dZD6Du>.

<sup>60</sup> European Commission, *European Agenda on Migration*, COM(2015) 240, 13 May 2015.

<sup>61</sup> European Commission, *The hotspot approach to managing migration flows*, 11 September 2015, available at: <http://bit.ly/2kESJFK>.

<sup>62</sup> *Ibid.*

<sup>63</sup> European Commission, <https://bit.ly/2wWHXVE>, Council Decisions (EU) 2015/1523 of 14 September 2015, OJ 2015, L239/146 and 2015/1601 of 22 September 2015, establishing provisional measures in the area of international protection for the benefit of Italy and Greece, OJ 2015, L248/80.

<b>Total</b>	-	<b>6,178</b>	<b>38,423</b>
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Source: National Coordination Centre for Border Control, Immigration and Asylum, Situation as of 31 December 2019, <https://bit.ly/2vWqvAr>.

The total capacity of the five hotspot facilities was initially planned to be 7,450 places.<sup>64</sup> However, according to official data available by the end of 2019, their capacity has been reduced to 6,178 places. In any event and as the official data show, these facilities on the Islands remain significantly overcrowded.

In March 2016, the adoption of the highly controversial EU-Turkey Statement committing “to end the irregular migration from Turkey to the EU”,<sup>65</sup> brought a transformation of the so-called hotspots on the Aegean islands.<sup>66</sup>

With the launch of the EU-Turkey Statement, hotspot facilities turned into closed detention centres. People arriving after 20 March 2016 through the Aegean islands, and thus subject to the EU-Turkey Statement, were automatically *de facto* detained within the premises of the hotspots in order to be readmitted to Turkey in case they did not seek international protection or their applications were rejected, either as inadmissible under the [Safe Third Country](#) or [First Country of Asylum](#) concepts, or on the merits. Following criticism by national and international organisations and actors, as well as due to the limited capacity to maintain and run closed facilities on the islands with high numbers of people, the practice of blanket detention has largely been abandoned from the end of 2016 onwards. It has been replaced by a practice of systematic geographical restriction, i.e. an obligation not to leave the island and reside at the hotspot facility, which is imposed indiscriminately to every newly arrived person (see [Freedom of Movement](#)).

Since April 2016, namely following the launch of the EU-Turkey Statement on 20 March 2016, and until 31 December 2019, 2,001 individuals had been returned to Turkey on the basis of the EU-Turkey Statement, of which, 801 in 2016, 683 in 2017, 322 in 2018 and 195 in 2019. In total, between 21 March 2016 and 31 December 2019, Syrian nationals account for 367 persons (18%) of those returned since 2016. 43 of them have been returned on the basis that their asylum claims were found inadmissible at second instance, on the basis of the “safe third country” concept. Moreover, of all those returned, 44% did not express a will to apply for asylum or withdrew their asylum applications in Greece.<sup>67</sup>

In this respect, it should be mentioned that on 28 February 2017, the European Union General Court gave an order, ruling that “the EU-Turkey Statement, as published by means of Press Release No 144/16, cannot be regarded as a measure adopted by the European Council, or, moreover, by any other institution, body, office or agency of the European Union, or as revealing the existence of such a measure that corresponds to the contested measure.” Therefore “the Court does not have jurisdiction to rule on the lawfulness of an international agreement concluded by the Member States”.<sup>68</sup> The order became final on 12 September 2018, as an appeal lodged before the Court of Justice of the European Union (CJEU) was rejected.<sup>69</sup>

<sup>64</sup> European Commission, *Third Report on the Progress made in the implementation of the EU-Turkey Statement*, COM(2016) 634, 28 September 2016.

<sup>65</sup> European Council, *EU-Turkey statement*, 18 March 2016, available at: <http://bit.ly/1VjZvOD>.

<sup>66</sup> The Greens / European Free Alliance in the European Parliament, *The EU-Turkey Statement and the Greek Hotspots, a failed European pilot project in refugee policy*, June 2018, available at: <https://bit.ly/38TAhkb>.

<sup>67</sup> UNHCR, *Returns from Greece to Turkey, Returns from Greece to Turkey, in the framework of the EU - TUR Statement*. Source: Greek Ministry of Citizen Protection, 31 December 2019, available at: <https://bit.ly/33jCUuD>. See also, UNCHR, *Returns from Greece to Turkey in the framework of the EU - TUR Statement*, available at: <https://data2.unhcr.org/en/documents/download/74370>.

<sup>68</sup> General Court of the European Union, Cases T-192/16, T-193/16 and T-257/16 *NF, NG and NM v. European Council*, Order of 28 February 2017, press release available at: <http://bit.ly/2IWZPrr>.

<sup>69</sup> CJEU, Cases C-208/17 P, C-209/17 P and 210/17 P *NF, NG and NM v European Council*, Order of 12 September 2018.

## 2.2. The domestic framework: Reception and Identification Centres

The hotspot approach is implemented in Greece through the legal framework governing the reception and identification procedure under L 4375/2016. In practice, the concept of reception and identification procedures for newly arrived people under Greek law predates the “hotspot” approach.

The 2010 Greek Action Plan on Asylum already provided that third-country nationals should be subjected to first reception procedures upon entry. The competent authority to provide such services was the First Reception Service (FRS), established by L 3907/2011. First reception procedures included:

- (a) Identity and nationality verification;
- (b) Registration;
- (c) Medical examination and any necessary care and psychosocial support;
- (d) Provision of proper information about newcomers’ obligations and rights, in particular about the conditions under which they can access the asylum procedure; and
- (e) Identification of those who belong to vulnerable groups so that they be given the proper procedure.<sup>70</sup>

This approach was first implemented by the First Reception Centre (FRC) set up in **Evros** in 2013,<sup>71</sup> which has remained operational to date even though it has not been affected by the hotspot approach. The Joint Ministerial Decision 2969/2015 issued in December 2015 provided for the establishment of five FRCs in the Eastern Aegean islands of **Lesvos, Kos, Chios, Samos** and **Leros**,<sup>72</sup> the regulation of which was provided by existing legislation regarding the First Reception Service.<sup>73</sup> However, this legislative act failed to respond to and regulate all the challenges arising within the scope of hotspots’ functions. As a result, issues not addressed by the existing legal framework, for example the involvement of EU Agencies in different procedures, long remained in a legislative vacuum.

In the light of the EU-Turkey statement of 18 March 2016, the Greek Parliament adopted on 3 April 2016 a law “On the organisation and operation of the Asylum Service, the Appeals Authority, the Reception and Identification Service, the establishment of the General Secretariat for Reception, the transposition into Greek legislation of the provisions of Directive 2013/32/EU, provisions on the employment of beneficiaries of international protection and other provisions”. This reform was passed through L 4375/2016.<sup>74</sup>

L 4375/2016 has partially attempted to regulate the establishment and function of hotspots and the procedures taking place there. However, national legislation has failed to effectively regulate the involvement of the EU Agencies, for example Frontex agents. Following the enactment of L 4375/2016, the FRS was succeeded by the Reception and Identification Service (RIS). The RIS is currently subsumed under the Special Secretariat of Reception of the Ministry of Citizenship.<sup>75</sup> The IPA, in force since 1 January 2020, regulates the functioning of the RICs and the conduct of the reception and identification procedure with a similar way.

According to Article 8(2) L 4375/2016, the RIS is responsible for “Registration, identification and data verification procedures, medical screening, identification of vulnerable persons, the provision of information, especially for international or another form of protection and return procedures, as well as

<sup>70</sup> Article 7 L 3907/2011.

<sup>71</sup> Joint Ministerial Decision 11.1/1076/2012, Gov. Gazette 3543/B/31.12.2012; Reception and Identification Service, *RIC at Fylakio, Evros*.

<sup>72</sup> Joint Ministerial Decision No 2969/2015, Gov. Gazette 2602/B/2-12-2015.

<sup>73</sup> Law 3907/2011 “On the Establishment of an Asylum Service and a First Reception Service, transposition into Greek Legislation of the provisions of the Directive 2008/115/EC ‘on common standards and procedures in Member States for returning illegally staying third-country nationals’ and other provisions”.

<sup>74</sup> L 4375/2016, Gov. Gazette 51/A/3-4-2016, available at: <http://bit.ly/2kKm2cu>.

<sup>75</sup> Article 8(1) L 4375/2016, as amended by Article 116(3) IPA.



the temporary stay of third-country nationals or stateless persons entering the country without complying with the legal formalities and their further referral to the appropriate reception or temporary accommodation structures.”<sup>76</sup>

Article 39 IPA, in force since 1 January 2020, provides that:

“All third-country nationals and stateless persons who enter without complying with the legal formalities in the country, shall be submitted to reception and identification procedures.”<sup>77</sup> Reception and identification procedures include five stages:<sup>78</sup>

1. Information on rights and obligations, transfer to other facilities, the possibility to seek protection or voluntary return, in a language the person understands and in an accessible manner, by the Information Unit of the Reception and Identification Centre (RIC) or by the Police, Coast Guard or Armed Forces in case of mass arrivals;<sup>79</sup>
2. Channelling to reception and identification procedure: According to the law, newly arrived persons should be directly transferred to a RIC, where they are subject to a 5-day “restriction of freedom within the premises of the centre” (*περιορισμός της ελευθερίας εντός του κέντρου*), which can be further extended by a maximum of 25 days if reception and identification procedures have not been completed.<sup>80</sup> This restriction of freedom entails “the prohibition to leave the Centre and the obligation to remain in it”.<sup>81</sup> Such a restriction is ordered on the basis of a written, duly motivated decision;<sup>82</sup>
3. Registration and medical checks, including **Identification** of vulnerable groups;<sup>83</sup>
4. Referral to the asylum procedure: As soon as asylum applications are made, the Special Rapid Response Units (*Ειδικά Κλιμάκια Ταχείας Συνδρομής*) of the Asylum Service distribute the cases according to country of origin. Subsequently, they proceed to prioritisation of applications according to nationality (see **Prioritised Examination**);<sup>84</sup>
5. Further referral and transfer to other reception or detention facilities depending on the circumstances of the case.<sup>85</sup>

### 2.2.1. Reception and identification procedures on the islands

As regards persons arriving on the Eastern Aegean islands and thus subject to the EU-Turkey Statement, as mentioned above, at the early stages of the implementation of the Statement, a detention measure was systematically and indiscriminately imposed to all newcomers. More precisely, such measure was imposed either *de facto*, under the pretext of a decision restricting the freedom within the premises of the RIC for a period of 25 days, or under a deportation decision together with a detention order.

Following criticism by national and international organisations and actors, and due to limited capacity to maintain and run closed facilities on the islands with high numbers of populations,<sup>86</sup> the “restriction of freedom” within the RIC premises as a *de facto* detention measure is no longer applied in the RIC of **Lesvos, Chios, Samos Leros and Kos**, as of the end of 2016. In most cases, newly arrived persons are allowed to exit the RIC, at least after some days. For example, in **Lesvos**, as of December 2019,

<sup>76</sup> See also Article 9 L 4375/2016, outlining the “reception and identification procedures”.

<sup>77</sup> Article 39(1) IPA.

<sup>78</sup> Article 39(2) IPA.

<sup>79</sup> Article 39(3) IPA.

<sup>80</sup> Article 39(4)(a) IPA.

<sup>81</sup> *Ibid.*

<sup>82</sup> Article 39(4)(a) IPA.

<sup>83</sup> Article 39(5) IPA.

<sup>84</sup> Article 39(6) IPA.

<sup>85</sup> Article 39(7) IPA.

<sup>86</sup> UNHCR, *Explanatory Memorandum pertaining to UNHCR’s submission to the Committee of Ministers of the Council of Europe on developments in the management of asylum and reception in Greece*, May 2017, available at: <http://bit.ly/2BbSrAA>, 2.

newcomers remain restricted in the sector used by the RIS within the RIC, until reception and identification procedures are conducted, almost within 3-5 days. Up until the conclusion of reception and identification procedures, a geographical restriction is systematically imposed on every newly arrived person on the Greek islands, initially by the police and subsequently by the Asylum Service, imposing the obligation to remain on the islands and the RIC facilities. For more details on the geographical limitation on the Greek Eastern Aegean Islands, see Reception Conditions, Freedom of movement.

In practice, those arriving on the Greek islands and falling under the EU-Turkey Statement are subject to a “restriction of freedom of movement” decision issued by the Head of the RIC<sup>87</sup>. The decision is revoked once the registration by the RIC is completed, usually within a couple of days. At the same time, a removal decision “based on the readmission procedure” and a pre-removal detention order are issued by the competent Police Directorate upon arrival, parallel to the decision of the Head of the RIC. The removal decision and detention order are respectively suspended by a “postponement of deportation” decision of the General Regional Police Director.<sup>88</sup> The latter decision imposes a geographical restriction, ordering the individual not to leave the island and to reside – in most cases – in the RIC or another accommodation facility on the island until the end of the asylum procedure. Once the asylum application is lodged, the same geographical restriction is imposed by the Asylum Service. For more details on the geographical limitation on the Greek Eastern Aegean Islands, see Reception Conditions, [Freedom of Movement](#). It is due to this practice of indiscriminate and *en mass* imposition of the geographical limitation measures to newly arrived persons on the islands that a significant deterioration of the living conditions on the islands has occurred. Newly arrived persons are obliged to reside for prolonged periods in overcrowded facilities, where food and water supply is reported insufficient, sanitation is poor and security highly problematic, while their mental health is aggravated (see [Reception Conditions](#)).

On the islands of **Lesvos**, **Kos** and to a certain extent **Leros**, the policy of automatic detention upon arrival, persists for newly arrived persons who belong to a so-called “low recognition rate” nationality and, who are still immediately detained upon arrival pursuant to the “pilot project”, despite their explicit wish to apply for asylum and without prior application of reception and identification procedures as provided for by the law (see Detention: [2. Detention policy following the EU-Turkey statement](#), [21. Pilot Project](#)).

Moreover, unaccompanied children, as a rule, are prohibited from moving freely on the islands and remain in the RIC under “restriction of liberty” or in “protective custody”. They spend lengthy periods in the RIC while waiting for a place in age-appropriate shelters or other facilities (see [Detention of Vulnerable Applicants](#)).<sup>89</sup>

In sum and as stated by the EU Fundamental Rights Agency (FRA):

*“given that new arrivals on the Greek islands will continue, the past three years have shown that the manner in which the hotspot approach is applied in Greece is not sustainable from a fundamental rights point of view [...] Keeping new arrivals in facilities at the border implies interferences with a number of fundamental rights”.*<sup>90</sup>

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<sup>87</sup> Article 9 L 4375/2016 as amended by Article 39 IPA, See also FRA, *Update of the 2016 Opinion of the European Union Agency for Fundamental Rights on fundamental rights in the ‘hotspots’ set up in Greece and Italy*, 3/2019, 4 March 2019, 8 «*The implementation of the EU-Turkey Statement is linked to the hotspots approach*», available at: <https://bit.ly/2WpjLCF>

<sup>88</sup> Pursuant to Article 78 L 3386/2005.

<sup>89</sup> UNHCR, Fact Sheet, 1-31 December 2019, available at: <https://bit.ly/2xJgTJZ>; UN High Commissioner for Refugees (UNHCR), Submission by the Office of the United Nations High Commissioner for Refugees in the case of International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece (Complaint No. 173/2018) before the European Committee of Social Rights, 9 August 2019, available at: <https://www.refworld.org/docid/5d9745494.html>.

<sup>90</sup> FRA, *Update of the 2016 Opinion of the European Union Agency for Fundamental Rights on fundamental rights in the ‘hotspots’ set up in Greece and Italy*, 3/2019, 4 March 2019, available at: <https://bit.ly/2WpjLCF>.

Since the implementation of the EU-Turkey Statement all newcomers are registered by the RIS.<sup>91</sup> In 2019, the registration of the newcomers carried out by the RIS on the island RICs has been conducted within few days, however significant shortcomings and delays occur in the provision of medical and psychosocial assessment/services as required by law, due to the insufficient number of medical staff working in the RIC on the islands (see also [Identification](#)) and the persisting severe overcrowding. As stated in 2019 by the CoE's Commissioner for Human Rights "there is a desperate lack of medical care and sanitation in the vastly overcrowded camps I have visited".<sup>92</sup>

On 20 November 2019, the Greek authorities have announced a plan to replace RICs facilities on the islands with "closed facilities" (closed RICs and pre-removal detention centres) with a total capacity of at least 18,000 places and to detain all newly arrived persons there, including families, vulnerable applicants etc., upon arrival, during the reception identification procedures and up until the completion of the asylum procedure or the removal of the person, respectively.<sup>93</sup> With a letter addressed to the Greek Authorities on 25 November 2019, the CoE Commissioner for Human Rights requested further clarifications regarding the government's announcement.<sup>94</sup> Said plan has not been implemented as of the end of April 2020, due to *inter alia* the reaction of the local communities on the islands.<sup>95</sup>

As of 26 January 2020, in the context of implementing the IPA and following the visit of the Minister for Migration and Asylum,<sup>96</sup> all the newly arrived persons on the island of Kos are immediately subject to detention in the Kos Pre-removal Detention Facility (PRDF), with the exception of UACs. For example, and as far as GCR is aware, following a mission on the island of Kos conducted on 11 to 14 February 2020, the first group of individuals, who have been detained upon their arrival on 26 January 2020 consisted of 55 nationals of Syria, Palestine and Somalia. Until 12 February 2020, there were 355 detainees at the PRDF. More recent information was not available.

### **Procedures followed for those arrived in March 2020 (suspension of access to asylum)**

As mentioned in Suspension of access to the Asylum Procedure on the basis of the Emergency Legislative Order (March 2020), tensions erupted at the Greek-Turkish land borders since the end of February 2020 due to an increased movement of thousands of persons, encouraged by the Turkish

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<sup>91</sup> Article 8(2) L 4375/2016 as amended by Article 116(3) L 4636/2019, Article 9 L 4375/2016 as amended by Article 39 IPA; see also, Ministerial Decree No 1/7433, Governmental Gazette B 2219/10.6.2019, *General Operation Regulation of the RICs and the Mobile Units of Reception and Identification*.

<sup>92</sup> *Inter alia* Commissioner for Human Rights, *Greece must urgently transfer asylum seekers from the Aegean islands and improve living conditions in reception facilities*, 31 October 2019, available at: <https://bit.ly/2Q74AgJ>; see also Médecins Sans Frontières' submission to the United Nations Committee Against Torture prior to the periodic review of Greece, 67th Session June 2019, available at: <https://bit.ly/38GNoVV>; UNHCR, *UNHCR Representative in Greece visits the Dodecanese*, 19 August 2019, available at: <https://www.unhcr.org/gr/en/12675-unhcr-representative-in-greece-visits-the-dodecanese.html>, European Court of Auditors, *Special Report No 24/2019: Asylum, relocation and return of migrants: Time to step up action to address disparities between objectives and results*, available at: <https://bit.ly/2TFKj3Y>, FRA, *Update of the 2016 Opinion of the European Union Agency for Fundamental Rights on fundamental rights in the 'hotspots' set up in Greece and Italy*, 3/2019, 4 March 2019, available at: <https://bit.ly/2WpjLCF>, Oxfam, *Vulnerable and abandoned: How the Greek reception system is failing to protect the most vulnerable people seeking asylum*, 9 January 2019, available at: <https://bit.ly/3cl7eDk>.

<sup>93</sup> Greek Government, *Ενημέρωση Πολιτικών Συντακτών – Το Επιχειρησιακό Σχέδιο της Κυβέρνησης για την αντιμετώπιση του μεταναστευτικού*, 20 November 2019, available at: <https://bit.ly/3cORChk> (in Greek).

<sup>94</sup> Council of Europe, Office of the Commissioner for Human Rights, *CommHR/sf/042-2019*, 25 November 2019, available at: <https://bit.ly/2WsnbDt>.

<sup>95</sup> Kathimerini.gr, *Clashes break out on islands over new migrant camps*, 25 February 2020, available at: <https://bit.ly/2TWaqTd>.

<sup>96</sup> Press Release, Ministry for Migration and Asylum, 26.01.2020, available at: <https://bit.ly/39Z2Myk> (in Greek).

authorities.<sup>97</sup> On 2 March 2020, the Greek authorities issued an Emergency Legislative Order (*Πράξη Νομοθετικού Περιεχομένου*, ΠΝΠ) which foresees the suspension of asylum applications for those who arrived “*illegally*” between 1 March 2020 and 31 March 2020. According to the Emergency Legislative order these persons are to be subject to return to their country of origin or transit “without registration.”<sup>98</sup>

As far as GCR is aware, on the islands and following the issuance of the Emergency Legislative Order, persons arrived after 1 March 2020, were not transferred to the RIC facilities and were not subject to reception and identification procedure. Instead some of them faced penal prosecution due to “illegal entry” while others are subject of administrative detention in different places on the Islands and they do not have access to the asylum procedure.

As of mid-March 2020, the Union of Police Officers of the Islands of Lesbos, Chios Samos and of North and South Dodecanese reported that the situation was as follows:<sup>99</sup>

- ❖ In **Lesvos** more than 450 people arrived since 1 March 2020. They are detained on a naval vessel at Lesbos port in significant substandard conditions and are refused to lodge asylum claims.<sup>100</sup> The naval vessel departed on 14 March 2020 from Lesbos and persons have been transferred for further detention to the mainland (Malakasa).
- ❖ On **Chios** island, 258 persons have arrived after 1 March 2020. 136 are detained in a municipal building with only one toilet, while 122 are detained in an open area of the Port and inside a police bus, which are used in order to sleep, but only have two chemical toilets.
- ❖ In **Samos**, 93 persons were detained in a room of Samos Port Authority without access to toilet or water.
- ❖ In **Symi** island (administrative jurisdiction of Kos), 21 persons remained at the balcony of the Police Station.
- ❖ In **Kos**, 150 persons are detained in the waiting room of the Port, with access to two toilets.
- ❖ In **Leros**, 252 persons remain detained in a semi-covered part of the Port with access to two chemical toilets.

The Unions of the Police Officers of said islands, underlined that “the areas where foreigners are detained do not meet the very basic standards of hygiene and security, neither for people remaining there (lack of water, toilets, concentration of a lot of people in small places without ventilation, no personal hygienic ets.) nor for duty police officers responsible for guarding them”.<sup>101</sup>

By the end of March 2020, those arrived on the Greek islands during March 2020 have been transferred in two new detention facilities on the mainland, specifically established to that end (**Malakasa** and **Serres**).<sup>102</sup> As reported at the beginning of April 2020 these two facilities have been turned into open facilities.<sup>103</sup>

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<sup>97</sup> Council of Europe, Commissioner for Human Rights, Time to immediately act and to address humanitarian and protection needs of people trapped between Turkey and Greece, 3 March 2020, available at: <https://bit.ly/39Hm0sd>.

<sup>98</sup> Emergency Legislative Order (ΠΝΠ) as of 2 March 2020, Gov. Gazette A/45/2 March 2020; with regards the lawfulness of the suspension of the asylum procedure see *inter alia* UNHCR, UNHCR statement on the situation at the Turkey-EU border, 2 March 2020, available at: <https://bit.ly/2Q62sWN>; Greek National Commission for Human Rights, Reviewing asylum and immigration policies and safeguarding human rights at the EU borders, 5 March 2020, available at: <https://bit.ly/39HtXh3>.

<sup>99</sup> Stonisi.gr, Μαζικά εξώδικα από τους Αστυνομικούς για το μεταναστευτικό, 13 March 2020, available in Greek at: <https://bit.ly/2TXyhU5>.

<sup>100</sup> Human Right Watch, Greece/EU: Allow New Arrivals to Claim Asylum, 10 March 2020, available at: <https://bit.ly/3cNyW1z>.

<sup>101</sup> Stonisi.gr, *Ibid*.

<sup>102</sup> Human Rights Watch (HRW), ‘Greece: Nearly 2,000 New Arrivals Detained in Overcrowded, Mainland Camps, 31 March 2020’, available at: <https://bit.ly/2WOBmfK>.

<sup>103</sup> Efsyn.gr, Άτακτη υπαναχώρηση για τα ανοιχτά «κλειστά» κέντρα Μαλακάσας και Σερρών, 7 April 2020, available in Greek at: <https://bit.ly/2YV62lt>.

## Procedures followed on the islands amid the COVID-19 outbreak

In addition to those who arrived during March 2020 and who were subject to the Emergency Legislative Order suspending the access to asylum procedure (and accordingly where not transferred to RICs but detained and transferred to mainland), those arrived since April 2020 on the Greek Islands are subject to a 14-day quarantine so as to prevent the potential spread of the virus, prior to their transfer to RICs in order to undergo reception and identification procedures.

As specific places/sites were not available to that end, individuals subject to the 14 days quarantine had to remain at the point of the arrival in a number of cases, i.e. in isolated beaches or in other inadequate locations, *inter alia* ports, buses etc.<sup>104</sup> However, a dedicated site for these purposes has been in operation since 8 May 2020 in **Lesvos**.<sup>105</sup>

## Actors present in the RIC

On top of civil society organisations, a number of official actors are present in the RIC facilities on the islands, including RIS, Frontex, Asylum Service, EASO and the Hellenic Police.

**Police:** The Police is responsible for guarding the external area of the hotspot facilities, as well as for the identification and verification of nationalities of newcomers. According to the IPA, the registration of the applications of international protection, the notification of the decisions and other procedural documents, as well as the registration of appeals, may be carried out by police staff.<sup>106</sup> Moreover, in exceptional circumstances, the interviews of the applicants under the “fast track border procedure” may be carried out by police staff, provided that they have received the necessary basic training in the field of international human rights law, the EU asylum *acquis* and interview techniques.<sup>107</sup> Decisions on applications for international protection are always taken by the Asylum Service, however.

**Frontex:** Frontex staff is also engaged in the identification and verification of nationality. Although Frontex should have an assisting role, it conducts nationality screening almost exclusively in practice, as the Greek authorities lack relevant capacity such as interpreters. The conduct of said procedures by Frontex is defined by an internal regulation. It should be noted that, even though the Greek authorities may base their decision concerning the nationality of a newcomer exclusively on an assessment by Frontex, documents issued by the latter are considered to be ‘non-paper’ and thereby inaccessible to individuals. Assessments by Frontex are thus extremely difficult to challenge in practice.

**UNHCR/IOM:** Information to newly arrived persons is provided by UNHCR and International Organisation for Migration (IOM) staff.

**Asylum Service:** According to L 4375/2016, those registered by the RIS expressing their will to seek international protection shall be referred to the competent Regional Asylum Office or Asylum Units, in order to have their claims registered and processed. According to IPA, currently in force, the Asylum Service has presence in the hotspots. Specifically, “(a) third-country national or stateless person wishing to seek international protection, shall be referred to the competent Regional Asylum Office, Unit of which may operate in the RIC; (b) both the receipt of applications and the interviews of applicants may take place within the premises of the RIC, in a place where confidentiality is ensured”.<sup>108</sup>

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<sup>104</sup> In.gr, Παρατηρημένοι σε παραλίες εν μέσω κοροναϊού πρόσφυγες που φτάνουν στη Λέσβο, 4 April 2020, available in Greek at: <https://bit.ly/2WqQ7zJ>.

<sup>105</sup> Capital.gr, Μυτιλήνη: Λειτουργεί από το πρωί η "καραντίνα" των νεοεισερχόμενων προσφύγων και μεταναστών, 9 May 2020, available at: <https://bit.ly/2WsrTPm>.

<sup>106</sup> Article 90(2) IPA.

<sup>107</sup> Article 90(3), b IPA.

<sup>108</sup> Article 39(6) IPA

**EASO:** EASO is also engaged in the asylum procedure. EASO experts have a rather active role within the scope of the [Fast-Track Border Procedure](#), as they conduct first instance personal interviews, they issue opinions regarding asylum applications and they are also involved in the vulnerability assessment procedure. Following a legislative reform in 2018, Greek-speaking EASO personnel can also conduct any administrative action for processing asylum applications, including in the [Regular Procedure](#).<sup>109</sup> Following a mission conducted in Greece in 2019, ECRE published a report in November 2019 which provides a detailed overview on the role of EASO in Greece.<sup>110</sup>

**RIS:** The RIS previously outsourced medical and psychosocial care provision to NGOs until mid-2017. Since then, the provision of said services have been undertaken by the Ministry of Health, throughout different entities under its supervision. At the end of 2019, the National Organisation for Public Health (*Εθνικός Οργανισμός Δημόσιας Υγείας, ΕΟΔΥ*), a private entity supervised and funded directly by the Ministry of Health and Social Solidarity,<sup>111</sup> was the competent body for the provision of medical and psychosocial services. Serious shortcomings have been noted in 2019 due to the insufficient number of medical staff in the RIC (see also [Identification](#)).

### 2.2.2. Reception and identification procedures in Evros

People arriving through the Evros border are not subject to the EU-Turkey statement. Therefore, they are not subject to the fast-track border procedure, their claims are not examined under the safe third country concept, and they are not imposed a geographical restriction upon release.

Persons entering Greece through the Greek-Turkish land border in Evros are subject to reception and identification procedures at the RIC of **Fylakio**, Orestiada, which is the only RIC that continues to operate as a closed facility. People transferred to the RIC in Fylakio are subject to a “restriction of freedom of movement” applied as a *de facto* detention measure, meaning that they remain restricted within the premises of the RIC.

Depending on the number of arrivals, new arrivals, including families and children, once detected and apprehended by the authorities may be firstly transferred to a border guard police station or the pre-removal centre in **Fylakio**, where they remain in detention (so called ‘pre-RIC detention’) pending their transfer to the RIC **Fylakio**. Prolonged ‘pre-RIC detention’ has occurred in instances where new arrivals surpassed the accommodation capacity of RIC **Fylakio**.<sup>112</sup> Their detention “up to the time that [the person] will be transferred to Evros (**Fylakio**) RIC in order to be subject to reception and identification procedures”, as justified in the relevant detention decisions, has no legal basis in national law (see [Grounds for Detention](#)). By the end of 2019, the period of pre-RIC detention has been limited to several days as far as GCR is aware.

According to official data, as of 31 December 2019 the capacity of **Fylakio** RIC was 240 places, while at the same date there were 391 persons remaining there.<sup>113</sup>

In 2019, a number of 14,257 persons were registered by the **Fylakio** RIC, out of which 731 of have been identified as belonging to a vulnerable group. Reception and identification procedures, including

<sup>109</sup> Article 36(11) L 4375/2016, inserted by Article 28(7) L 4540/2018; Article 65(16) and 90(3) b IPA; ECRE Report, *The Role of EASO Operations in National Asylum Systems*, November 2019, available at: <https://bit.ly/39JFEDI>.

<sup>110</sup> ECRE, *The Role of EASO Operations in national asylum systems*, November 2019, available at: <https://bit.ly/3cSt5rs>.

<sup>111</sup> Established by L 4633/2019.

<sup>112</sup> Communication from the UNHCR (15.5.2019) in the M.S.S. and Rahimi groups v. Greece (Applications No.30696/09, 8687/08), available at: <https://bit.ly/39PPbt7>.

<sup>113</sup> Information provided by the Reception and Identification Service, 6 February 2020.

vulnerability assessment are reported to be conducted in one week on average.<sup>114</sup>

After the maximum period of 25 days, newly arrived persons are released, with the exception of those referred to pre-removal detention facilities, where they are further detained in view of removal. As mentioned by UNHCR, “[a]t times of overcrowding in the RIC in **Evros**, new arrivals may be directed to detention facilities in the region instead of the RIC. A number of persons from so-called ‘refugee-producing countries’ may be directly released, with a 6-month suspension of the deportation decision, but without having had the opportunity to apply for asylum”.<sup>115</sup> Upon release, asylum seekers from **Evros** are not referred by the State to open reception facilities due to lack of space and the priority given to referrals from the islands.<sup>116</sup>

Unaccompanied children may remain in the RIC of **Fylakio** for a period exceeding the maximum period of 25 days under the pretext of “protective custody”, while waiting for a place in a reception facility to be made available. As stated by UNHCR in 2019, **Fylakio** RIC “often has an average of 100 to 140 UAC staying under ‘protective custody’ beyond the 25 days and up to 3-5 months. During this period, the children are restricted in a facility without adequate medical and psychosocial services and without access to recreational and educational activities. Due to overcrowding, they stay together with families and adults, at risk of exposure to exploitation and abuse. UNHCR has observed gaps in the age registration procedure followed by the police and Frontex as well as in the referral to the age assessment procedure, which is applied contrary to the provisions provided in Greek law, which foresees a step-by-step and holistic assessment by the medical and psychosocial support unit in the RIC defining the referral to the hospital as the last step and only if the medical and psychosocial assessment in the RIC is not conclusive. In practice, the medical and psychosocial assessment in the RIC is skipped and a referral takes place directly to the hospital for an x-ray assessment, which usually concludes that the child is an adult”.<sup>117</sup>

In 2019, 371 unaccompanied children were registered in the RIC of **Fylakio**, while the average waiting period to be transferred to appropriate accommodation was six months.<sup>118</sup>

### **Procedures followed for those arrived in March 2020 (suspension of access to asylum)**

As mentioned in Suspension of access to the Asylum Procedure on the basis of the Emergency Legislative Order (March 2020), following the tensions that erupted at the Greek-Turkish land border,<sup>119</sup> the Greek authorities issued an Emergency Legislative Order on 2 March 2020 which suspended access to asylum for those who arrived “*illegally*” (sic) between 1 March 2020 and 31 March 2020. According to the Order, newly arrived persons subject to this Order, are subject to return to their country of origin or transit “without registration”.<sup>120</sup> As far as GCR is aware, newly arrived persons during March, were not subject to reception and identification procedures nor did they have access to the asylum procedure. They

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<sup>114</sup> *Ibid.*

<sup>115</sup> Communication from the UNHCR (15.5.2019) in the M.S.S. and Rahimi groups v. Greece (Applications No.30696/09, 8687/08), *ibid.*

<sup>116</sup> *Ibid.*

<sup>117</sup> UN High Commissioner for Refugees (UNHCR), Submission by the Office of the United Nations High Commissioner for Refugees in the case of International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece (Complaint No. 173/2018) before the European Committee of Social Rights, 9 August 2019, available at: <https://www.refworld.org/docid/5d9745494.html> .

<sup>118</sup> Information provided by Reception and Identification Service, 6 February 2020.

<sup>119</sup> Council of Europe, Commissioner for Human Rights, Time to immediately act and to address humanitarian and protection needs of people trapped between Turkey and Greece, 3 March 2020, available at: <https://bit.ly/39Hm0sd>.

<sup>120</sup> Emergency Legislative Order (ΠΝΠ) as of 2 March 2020, Gov. Gazette A/45/2 March 2020; with regards the lawfulness of the suspension of the asylum procedure see *inter alia* UNHCR, UNHCR statement on the situation at the Turkey-EU border, 2 March 2020, available at: <https://bit.ly/2Q62sWN>; Greek National Commission for Human Rights, Reviewing asylum and immigration policies and safeguarding human rights at the EU borders, 5 March 2020, available at: <https://bit.ly/39HtXh3>.

were prosecuted for “illegal entry” and depending of the decision of the Penal Court, they either remain in penal custody or are (administratively) detained in pre-removal detention facilities.

As reported in the media, the Penal Court in **Orestiada (Evros)** has found 30 newly arrived persons, (15 men and 15 women) guilty for “illegal entry” on 2 March 2020. According to this information, all men have been sentenced to three to four years of imprisonment and a fine of €10,000, while the women have been sentenced to a €5,000 fine and suspended prison sentence of 3 years. Moreover, on 1 March 2020, 17 newly arrived men of Afghan origin were sentenced to 3,5 years of imprisonment and a €10,000 fine.<sup>121</sup> A total of 410 persons were reportedly arrested in the Evros Region (Greek – Turkish land borders) between 29 February and 16 March 2020.<sup>122</sup>

### 3. Registration of the asylum application

#### Indicators: Registration

1. Are specific time limits laid down in law for making an application?  Yes  No  
❖ If so, what is the time limit for lodging an application?
2. Are specific time limits laid down in law for lodging an application?  Yes  No  
❖ If so, what is the time limit for lodging an application?
3. Are registration and lodging distinct stages in the law or in practice?  Yes  No
3. Is the authority with which the application is lodged also the authority responsible for its examination?  Yes  No

#### 3.1. Rules for the registration and lodging of applications

Part III of L 4375/201 - as modified by L 4399/2016 and L 4540/2018 - was in force until the end of 2019 and provided the rules relevant to the registration and lodging of applications for international protection. On 1 January 2020, it has been replaced with Article 65 IPA which transposes Article 6 of the recast Asylum Procedures Directive relating to access to the procedure.

As outlined below, Greek law refers to simple registration (*απλή καταγραφή*) to describe the notion of “registration” and full registration (*πλήρης καταγραφή*) to describe the notion of “lodging” of an application for international protection under the Directive.

#### Registration of applications for international protection (“Καταγραφή”)

Similarly, to the previous Article 36(1)(a) L 4375/2016, the new Article 65(1) IPA provides that any foreigner or stateless person has the right to “make” an application for international protection. In this case, the application is submitted before the competent receiving authorities, i.e. the Regional Asylum Offices (RAO), the Asylum Units (AAU) or Mobile Asylum Units of the Asylum Service,<sup>123</sup> depending on their local jurisdiction, which shall immediately proceed with the “full registration” (*πλήρης καταγραφή*) of the application. Following a legislative reform in 2018, in case of urgent need, the Asylum Service may

<sup>121</sup> The Press Project, Δικαστήριο επέβαλε σε δεκάδες ανθρώπους ποινή φυλάκισης έως 4 χρόνια με την κατηγορία της παράνομης εισόδου στην ελληνική επικράτεια, 3 March 2020, available at: <https://bit.ly/2W3s4qU> (in Greek).

<sup>122</sup> Radioevros.gr, Μηδενικές συλλήψεις μεταναστών το τελευταίο 24ωρο, 16 March 2020, available at: <https://bit.ly/3b3vRbR> (in Greek).

<sup>123</sup> Articles 34(1)(id) and 36(1) L 4375/2016; Articles 63(d) and 65(1) IPA.



be supported by Greek-speaking personnel provided by EASO for the registration of applications.<sup>124</sup> This is now also exclusively foreseen by the IPA.<sup>125</sup>

Following the “full registration” of the asylum claim,<sup>126</sup> the application for international protection is considered to be lodged (*κατατεθειμένη*).<sup>127</sup>

Under the previous L. 4375/2016, where “for whatever reason” full registration was not possible, following a decision of the Director of the Asylum Service, the Asylum Service could conduct a “basic registration” (*απλή καταγραφή*) of the asylum seeker’s necessary details within 3 working days, and then proceeded to the full registration as soon as possible and by way of priority.<sup>128</sup> The newly introduced IPA foresees that the time limit in which such a full registration should take place, should not exceed 15 days. More precisely, according to the IPA, where “for whatever reason” full registration is not possible, following a decision of the Director of the Asylum Service, the Asylum Service may conduct a “basic registration” (*απλή καταγραφή*) of the asylum seeker’s necessary details within 3 working days, and then proceed to the full registration by way of priority within a period not exceeding 15 working days from “basic registration”.<sup>129</sup> In such a case, the applicant receives upon “basic registration” a document indicating his or her personal details and a photograph, to be replaced by the International Protection Applicant Card upon the lodging of the application.<sup>130</sup>

According to the IPA, if the application is submitted before a non-competent authority, that authority is obliged to promptly notify the competent receiving authority and to refer the applicant thereto.<sup>131</sup> However, in practice in order for an asylum application to be properly lodged, the applicant should lodge an application in person before the Asylum Service.

For third-country nationals willing to apply for asylum while in detention or under reception and identification procedures, the detention authority or RIS must register the intention to apply on an electronic network connected to the Asylum Service no later than within 3 working days under the IPA.<sup>132</sup> This period was shortened by the IPA as the previous L. 4375/2016 foresaw that the registration by RIS of the intention to apply for international protection should take place within 6 working days,<sup>133</sup> The previous L. 4375/2016 further foresaw the possibility to extend this time limit to 10 working days in cases where a large number of applications are submitted simultaneously and render registration particularly difficult.<sup>134</sup> The IPA does not foresee this possibility however.

Moreover, according to the IPA, the lodging of the application with the Asylum Service must be carried out within 7 working days after the “basic registration” by the detention authority or the RIS.<sup>135</sup> In order for the application to be fully registered, the detainee is transferred to the competent RAO or AAU.<sup>136</sup>

### **Lodging of applications (“Κατάθεση”)**

No time limit is set by law for lodging an asylum application. However, similarly to the previous Article 42 L 4375/2016, the new Article 78 IPA transposes Article 13 of the recast Asylum Procedures Directive that

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<sup>124</sup> Article 36(11) L 4375/2016, as amended by Article 28(7) L 4540/2018.

<sup>125</sup> Article 65(16) IPA.

<sup>126</sup> Article 36(1)(a) L 4375/2016 and Article 65(1) IPA.

<sup>127</sup> Article 36(1)(c) L 4375/2016 and Article 65(3) IPA.

<sup>128</sup> Article 36(1)(b) L 4375/2016.

<sup>129</sup> Article 65(2) IPA.

<sup>130</sup> *Ibid.*

<sup>131</sup> Article 36(4) L 4375/2016 and Article 65(9) IPA.

<sup>132</sup> Article 65(7) IPA.

<sup>133</sup> Article 36(3) L 4375/2016.

<sup>134</sup> Article 36(5) L 4375/2016.

<sup>135</sup> Article 65(7) IPA.

<sup>136</sup> Article 36(3) L 4375/2016 and Article 65(7) IPA.

refers to applicants' obligations and foresees that applicants are required to appear before competent authorities in person, without delay, in order to submit their application for international protection.

Applications must be lodged in person,<sup>137</sup> except under *force majeure* conditions.<sup>138</sup> According to the IPA, the lodging of the application must contain *inter alia* the personal details of the applicant and the full reasons for seeking international protection.<sup>139</sup>

For those languages where a Skype line is available, an appointment through Skype should be fixed by the applicant before he or she can present him or herself before the Asylum Service in order to lodge an application.

As a general rule, the IPA in force since 1 January 2020 foresees that the asylum seeker's card, which is provided to all persons who have fully registered i.e. lodged their application, is valid for 6 months, which can be renewed as long as the examination is pending.<sup>140</sup> However, asylum seeker's cards for applicants remaining on the islands of **Lesvos, Samos, Chios, Leros, Kos** and **Rhodes** subject to a "geographical limitation" is valid for 1 month, which can be also renewed.

Moreover, the IPA provides for a number of cases where the asylum seeker's card can be valid for shorter periods. Thus the validity of the asylum seeker's card can be set for a period:

- No longer than 3 months, in case that the applicant belongs to a nationality with a recognition rate lower than 35% in accordance with the official EU statistics and by taking into consideration the period for the issuance of a first instance decision expected;
- No longer than 30 days, in case that the communication of a decision or a transfer on the basis of the Dublin Regulation is imminent;
- No longer than 25 days, in case that the application is examined "under absolute priority"
- No longer than 30 days, in case that the application is examined "under priority", under the accelerated procedure or under Art. 84 (inadmissible);
- No longer than 15 days, in case of application examined under the border procedure.<sup>141</sup>

In total, the Asylum Service registered 77,287 asylum applications in 2019. Afghans were the largest group of applicants with 23,828 applications, followed by Syrians with 10,856 applications.<sup>142</sup>

### Role of EASO in registration

EASO deploys Registration Assistants to support the Greek Asylum Service in charge of registration across the territory. Registration Assistants are almost exclusively locally recruited interim staff, not least given that, in countries such as Greece, citizenship is required for access to the database managed by the police (*Αλκυόνη*) which is used by the Asylum Service. As of July 2019, registration support was provided in areas including **Lesvos, Chios, Samos, Leros, Kos, Athens, Piraeus, Thessaloniki, Crete, Alexandroupoli, Fylakio**, as well as pre-removal detention centres such as **Paranesti**.<sup>143</sup>

In the first half of 2019, out of a total of 30,443 asylum applications lodged in Greece, 16,126 were lodged with the support of EASO. This means that more than half of the applications (53%) were lodged with the support of EASO during that period.<sup>144</sup> Figures for the whole year 2019 were not available. However,

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<sup>137</sup> Article 65(6) IPA.

<sup>138</sup> Article 78(3) IPA.

<sup>139</sup> Article 65(1) IPA.

<sup>140</sup> Article 60 (1) I. 4636/2019.

<sup>141</sup> Art 60 (2) L. 4636/2019.

<sup>142</sup> Information provided by the Asylum Service, 17 February 2020.

<sup>143</sup> ECRE, *The Role of EASO Operations in national asylum systems*, November 2019, available at: <https://bit.ly/3cSt5rs>, 7.

<sup>144</sup> Ibid.

given that EASO announced that the Agency's operations in Greece are expected to double in size to over 1,000 personnel in 2020,<sup>145</sup> it is likely that the latter will continue make a substantial contribution to the authorities' efforts to register asylum applications.

### 3.2. Access to the procedure on the mainland

Access to the asylum procedure remains a structural and endemic problem in Greece. Difficulties with regard to access to the asylum procedure had already been observed since the start of the operation of the Asylum Service in 2013, in particular due to Asylum Service staff shortages and the non-operation of all RAO provided by law. A system for granting appointments for registration of asylum applications through Skype, in place since 2014, has not solved the problem.

The Ombudsman has constantly highlighted that accessing the asylum procedure through Skype is a "restrictive system, "which" appears to be in contrast with the principle of universal, continuous and unhindered access to the asylum procedure". According to the Ombudsman, the Skype system has become part of the problem, rather than a technical solution.<sup>146</sup>

The UN Committee Against Torture, in its concluding observations on the seventh periodic report of Greece (September 2019), highlighted the fact that access to asylum on the mainland remains problematic, largely due to difficulties in accessing the Skype-based appointment system in place for registration, which has limited capacity and availability for interpretation and recommended to the State party to "reinforce the capacity of the Asylum Service to substantively assess all individual applications for asylum or international protection".<sup>147</sup>

Without underestimating the number of applications lodged on the mainland in 2019 (37,708 applications out of a total of 77,287) access to asylum on the mainland continued to be problematic and intensified throughout 2019.

Since January 2019, the Skype line is available for 22 hours per week for access to the RAO in the **Attica** region. The detailed registration schedule through Skype is available on the Asylum Service's website.<sup>148</sup> Two staff members of the Asylum Service together with an interpreter are dealing with the operation of the Skype application system for six hours on a daily basis.<sup>149</sup>

According to UNHCR (May 2019), persons on the mainland have to wait around 1-2 months to get through a Skype line, depending on the language, while actual full registration takes another 3-4 months on average in two of the main Asylum Offices, Attica and Thessaloniki. Longer delays can also occur depending on the language of the applicant, as far as GCR is aware.<sup>150</sup>

Deficiencies in the Skype appointment system, stemming from limited capacity and availability of interpretation and barriers to applicants' access to the internet, hinder the access of persons willing to apply for asylum to the procedure. Consequently, prospective asylum seekers frequently have to try multiple times, often over a period of several months, before they manage to get through the Skype line and to obtain appointment for the registration of their application, meanwhile facing the danger of a potential arrest and detention by the police. They are deprived of the assistance provided to asylum seekers, including reception conditions and in particular access to housing. Moreover, even if a Skype

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<sup>145</sup> EASO, 'EASO operations in Greece to expand significantly' 28 January 2020, available at: <https://bit.ly/3cMwXu5>.

<sup>146</sup> See e.g. Greek Ombudsman, *Special Report: Migration flows and refugee protection*, April 2017.

<sup>147</sup> UN Committee Against Torture, Concluding Observations on the seventh periodic report of Greece, 3 September 2019, CAT/C/GRC/CO/7, available at: <https://bit.ly/39Sp8la>.

<sup>148</sup> Asylum Service, *Registration Schedule*, 28 January 2019, available at: <https://bit.ly/2GnIROw>.

<sup>149</sup> Information provided by the Asylum Service, 17 February 2020

<sup>150</sup> Communication from the UNHCR (15.5.2019) in the M.S.S. and Rahimi groups v. Greece (Applications No.30696/09, 8687/08), available at: <https://bit.ly/33kkdqy>.

appointment is scheduled, in the meanwhile the applicant is not provided with any document in order to prove that he/she has already contacted the Asylum Service and he/she faces arrest and detention in view of removal.

GCR has encountered cases of applicants being detained during 2019 because they lacked legal documentation either due to the fact that they did not manage to get a skype appointment or that they did not possess any document proving that he/she had already fixed an appointment with the Asylum Service for registration through Skype, as such documents do not exist.

In Northern Greece, in the jurisdiction of Thessaloniki RAO, there is a pilot project that allows persons staying in camps to express their will to apply for asylum to the RIS present in the camp (instead of scheduling an appointment through Skype). Although this is undoubtedly an improvement compared to the Skype system, the waiting times remain extensive, ranging from 3 to 6 months or even more, as reported.<sup>151</sup>

The average time between the moment of fixing an appointment for registration through Skype and full registration was 44 days in 2019.<sup>152</sup>

### 3.3. Access to the procedure from administrative detention

Access to the asylum procedure for persons detained for the purpose of removal is highly problematic. The application of a detained person having expressed his or her will to apply for asylum is registered only after a certain period of time. The person remains detained between the expression of the intention to seek asylum and the registration of the application, by virtue of a removal order. He is deprived of any procedural guarantees provided to asylum seekers,<sup>153</sup> despite the fact that according to Greek law, the person who expresses his/her intention to lodge an application for international protection is an asylum seeker. Since the waiting period between expression of intention and registration is not counted in the [Duration of Detention](#), asylum seekers may be detained for a total period exceeding the maximum detention time limit for asylum seekers.<sup>154</sup>

The time period between the expression of intention to apply for asylum and the registration varies depending the circumstances of each case, and in particular the capacity of the competent authority, the availability of interpretation, and the number of people willing to apply for asylum from detention.

In December 2019, the UN Working Group on Arbitrary Detention, “observed that many detainees either did not understand their right to apply for asylum and/or the procedure involved in doing so, with some individuals incorrectly believing that the process was initiated when they were fingerprinted. There is no established scheme for providing legal aid during the first instance asylum application, and interpretation was not consistently provided, with asylum seekers relying on second-hand information from fellow applicants. The Working Group was informed that no information is provided by the police to the detainees on their right to apply for international protection or the procedural stages; such information is only provided by non-government actors”.<sup>155</sup>

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<sup>151</sup> Greek Helsinki Monitor (GHM) and other, No end in sight, August 2019, available at: <https://bit.ly/2TR4IbX>.

<sup>152</sup> Information provided by the Asylum Service, 17 February 2020

<sup>153</sup> Global Detention Project & Greek Council for Refugees, Joint Submission to the Working Group on Arbitrary Detention in Preparation for its Mission to Greece in December 2019, Submitted in October 2019, available at: <https://bit.ly/2TRYmna>.

<sup>154</sup> Communication from the UNHCR (15.5.2019) in the M.S.S. and Rahimi groups v. Greece (Applications No.30696/09, 8687/08).

<sup>155</sup> UN Working Group on Arbitrary Detention, Preliminary Findings from its visit to Greece (2 - 13 December 2019), available at: <https://bit.ly/33lpMVL>.

### 3.4. Suspension of access to the Asylum Procedure on the basis of the Emergency Legislative Order (March 2020)

As mentioned in Reception and identification procedures on the islands, following the tension that erupted at the Greek-Turkish land borders at the end of February 2020,<sup>156</sup> the Greek Authorities issued an Emergency Legislative Order (*Πράξη Νομοθετικού Περιεχομένου/ΠΝΠ*) on 2 March 2020 which suspends access to the asylum procedure for persons entering illegally in the country during March 2020.<sup>157</sup> “The extremely urgent and unpredictable need to face the asymmetrical threat against the security of the country” and the “the sovereign right[s]” of the country have been invoked in order to justify the issuance of the Order.<sup>158</sup>

According to the Order:

- “1. *The lodging of the asylum application from persons who enter the country illegally(sic) since the entry into force of the present Order is suspended. These persons are returned in their country of origin or transit without registration.*
2. *The provision of para. 1 is valid for (1) one month [until 31 March 2020]*
3. *With and act of the Ministerial Council the period set in para. 2 can be shortened.”*

As stated by UNHCR on the same day of the issuance of the Emergency Legislative Order,

*“[a]ll States have a right to control their borders and manage irregular movements, but at the same time should refrain from the use of excessive or disproportionate force and maintain systems for handling asylum requests in an orderly manner.*

*Neither the 1951 Convention Relating to the Status of Refugees nor EU refugee law provides any legal basis for the suspension of the reception of asylum applications”.*<sup>159</sup>

Moreover the Greek National Commission for Human Rights (GNCHR), in a public statement issued on 5 March 2020, noted that :

*“there are no clauses allowing for derogation from the application of the aforementioned provisions [the right to seek asylum and the prohibition of refoulement] in the event of an emergency situation, on grounds of national security, public health etc” and*

*“Call[ed] upon the Greek Government: [...]to lift the decision to suspend the lodging of asylum applications as well as the decision to automatically return newcomers to the states of origin or transit, while providing for a legal access route to asylum in a coordinated manner”.*<sup>160</sup>

Respectively, in an open letter addressed to the Greek Government and the EU institutions, 152 civil society organisations urged

*“the Greek Government to [w]ithdraw the illegal and unconstitutional Emergency Legislative Decree and to respect the obligations of the Greek State concerning the protection of human life*

<sup>156</sup> Council of Europe, Commissioner for Human Rights, Time to immediately act and to address humanitarian and protection needs of people trapped between Turkey and Greece, 3 March 2020, available at: <https://bit.ly/39Hm0sd>.

<sup>157</sup> Emergency Legislative Order as of 2 March 2020, Gov. Gazette A/45/2 March 2020.

<sup>158</sup> Emergency Legislative Order as of 2 March 2020, recitals 2 and 3.

<sup>159</sup> UNHCR, UNHCR statement on the situation at the Turkey-EU border, 2 March 2020, available at: <https://bit.ly/2Q62sWN>.

<sup>160</sup> Greek National Commission for Human Rights, Reviewing asylum and immigration policies and safeguarding human rights at the EU borders, 5 March 2020, available at: <https://bit.ly/39HtXh3>;

*and rescue at sea and at the land borders” and the European Commission “as the guardian of the Treaties, [to] protect the right to asylum as enshrined in EU law”.*<sup>161</sup>

On 12 March 2020, the EU Commissioner for Home Affairs Ylva Johansson has stated: “Individuals in the European Union have the right to apply for asylum. This is in the treaty, this is in international law. This we can’t suspend”.<sup>162</sup>

As a result of the Emergency Legislative Order, access to the asylum procedure for potential applicants who entered Greece in an irregular manner during March 2020 was suspended by law. In practice, this means that third country nationals who entered the Greek territory irregularly throughout March 2020, were arrested and a number of them were prosecuted due to the “illegal entry”.<sup>163</sup> Depending on the decision of the Penal Court they either remained in (penal) custody or they were transferred to migration detention facilities where they are detained in view of removal without having access to asylum. In particular those arriving on the islands were transferred for detention in the mainland in two new detention facility operating since mid-March 2020, namely in **Malakasa** (Attica Region) and **Serres** (North Greece).

According to UNHCR, 347 persons have arrived through the land borders in Evros region (Greek – Turkish land borders) and 2,207 persons arrived on the Greek islands during the month of March 2020.<sup>164</sup>

GCR filed an application for annulment and an application for suspension against the said Emergency Legislative Order before the Council of State, along with a request of interim order due to the refusal of the authorities to register asylum applications of three Afghan women who entered Greece on 1 March 2020 from Evros and were subsequently deprived access to asylum. On 30 March 2020, the Council of State, partially accepted the request for interim order for 2 of these cases, and ordered the authorities to refrain from any forcible removal.<sup>165</sup>

In April 2020, the suspension of access to asylum on the basis of the Emergency Legislative Order was lifted and persons who had entered Greece during March 2020 were allowed to access the asylum procedure. However, given that the Asylum Service was not operating at that time due to the COVID-19 measures, the registration of the applications was not feasible up until the resumption of the operation of the Asylum Service (18 May 2020).<sup>166</sup> For those entered Greece during March 2020 and remained detained after the lift of the suspension of access to asylum on the basis of the Emergency Legislative Order, police authorities gradually recorded their will to apply for asylum, while the registration of the application took place following the resumption of the work of the Asylum Service on 18 May 2020.

### 3.5. Suspension of access to the Asylum Procedure due to the COVID-19 measures

Within the framework of the measures taken for the prevention of the spread of the COVID 19, since 13 March 2020 the Asylum Service and all RAO and AAU had suspended the reception of public, including the registration of new asylum applications.<sup>167</sup> To this regards it should be mentioned that according to the Guidance of the EU Commission on the implementation of relevant EU provisions in the area of asylum during the COVID 19 prevention measures, issued in April 2020, “even if there are delays, the third-

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<sup>161</sup> Open Letter of 152 organizations regarding the current developments at the Greek border, 4 March 2020 available at: <https://bit.ly/2vWgnrr>.

<sup>162</sup> The Guardian, ‘Greece warned by EU it must uphold the right to asylum’, 12 March 2020, available at: <https://bit.ly/3d2TfrV>.

<sup>163</sup> Art. 83 L. 3386/2005.

<sup>164</sup> UNHCR, Operational Portal, available at: <https://bit.ly/36b7w2X>.

<sup>165</sup> GCR, Σχόλιο του ΕΣΠ σχετικά με την προσωρινή διαταγή του ΣΤΕ, 30 March 2020, available in Greek at: <https://bit.ly/2WusMNL>.

<sup>166</sup> Emergency Legislative Order as of 11 March 2020, Gov Gazette A’ 55/11.3.2020.

<sup>167</sup> Emergency Legislative Order as of 11 March 2020, Gov Gazette A’ 55/11.3.2020.

country nationals who apply for international protection must have their application registered by the authorities and be able to lodge them”.<sup>168</sup> The suspension was valid up until 15 May 2020 and the Asylum Service resumed its operation on 18 May 2020. However, with the exception of persons under administrative detention, the registration of new asylum applications was not taking place by the end of May 2020.

## C. Procedures

### 1. Regular procedure

#### 1.1. General (scope, time limits)

##### Indicators: Regular Procedure: General

1. Time limit set in law for the determining authority to make a decision on the asylum application at first instance: 6 months
2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing?  Yes  No
3. Backlog of pending cases at first instance as of 31 December 2019: 87,461

The Asylum Service received 77,287 new applications in 2019, which amounts to an increase of 15.4% compared to 2018. Out of the 77,287 new applications 39,505 were initially channeled under the **Fast-Track Border Procedure**. Of those, 18,849 were referred to the regular procedure due to vulnerability and 1,432 due to the application of the Dublin Regulation.<sup>169</sup>

According to the new IPA, an asylum application should be examined “the soonest possible” and, in any case, within 6 months, in the framework of the regular procedure.<sup>170</sup> This time limit may be extended for a period not exceeding a further 3 months, where a large number of third country nationals or stateless persons simultaneously apply for international protection.<sup>171</sup> The previous L.4375/2016 provided such an extension also where complex issues of fact and/or law were involved or where the delay could be attributed to the applicant.<sup>172</sup> According to the new IPA, in any event, the examination of the application should not exceed 21 months.<sup>173</sup>

Where no decision is issued within the maximum time limit fixed in each case, the asylum seeker has the right to request information from the Asylum Service on the timeframe within which a decision is expected to be issued. As expressly foreseen in the new IPA, “this does not constitute an obligation on the part of the Asylum Service to take a decision within a specific time limit.”<sup>174</sup>

Decisions granting status are given to the person of concern in extract, which does not include the decision’s reasoning. According to the new IPA, in order for the entire decision to be delivered to the person recognised as a beneficiary of international protection, a special legitimate interest (*ειδικό έννομο συμφέρον*) should be proven by the person in question.<sup>175</sup> If a special legitimate interest is not proven, the Asylum Service refuses to deliver the entire decision in practice.<sup>176</sup>

<sup>168</sup> Communication from the Commission, COVID-19: Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement, 17 April 2020, 2020/C 126/02.

<sup>169</sup> Information provided by the Asylum Service, 17 February 2020.

<sup>170</sup> Article 83(3) IPA.

<sup>171</sup> *Ibid.*

<sup>172</sup> Article 51(3) L 4375/2016.

<sup>173</sup> Article 83(3) IPA.

<sup>174</sup> Article 83(6) IPA.

<sup>175</sup> Article 69(5) IPA

<sup>176</sup> Asylum Service, Document no 34200/15.9.2016 “Request for a copy”.

## Duration of procedures

Following the significant increase of asylum applications in recent years, the length of the examination of asylum applications is a serious matter of concern. Out of the 87,461 applications pending at the end of 2019, more than half (51.48%) were pending for more than six months since the day they were lodged:

Pending applications at first instance from full registration: 31 December 2019	
Length of pending procedure	Number
< 6 months	42,436
> 6 months	45,025
<b>Total</b>	<b>87,461</b>

Source: Asylum Service.

In practice, the average processing time is longer if the period between pre-registration and **Registration** of the application is taken into consideration. Thus, the average time between the applicant's expression of intention to apply for asylum and the interview in 2019 was 10.6 months, due to the average 44-day delay between pre-registration and **Registration** of the application, and the average delay of 276 days between registration and the personal interview.<sup>177</sup>

The average processing time between pre-registration and the issuance of a first instance decision was 10.3 months; 44 days on average between pre-registration and **Registration** and 281 days on average between registration and issuance of first-instance decision.<sup>178</sup>

Moreover, out of the total number of 87,461 applications pending by the end of 2019, the **Personal Interview** had not yet taken place in 71,396 (81.6%) of them. In 23,519 of the applications pending as of 31 December 2019, the interview has been scheduled within the first semester of 2020, while in the rest, namely 47,877 of cases the interview is scheduled within the second semester of 2020 or even after 2020.<sup>179</sup>

A rescheduled appointment following a cancelled interview is usually set within several months. However, GCR is aware of cases in which the examination has been rescheduled with significant delays. These include:<sup>180</sup>

- ❖ The case of an Iranian (Arabic speaker) whose interview was scheduled for January 2024 by the RAO of **Thessaloniki**;
- ❖ The case of a Palestinian whose interview was scheduled for 2022 by the RAO of **Thessaloniki**;
- ❖ The case of a Bangla unaccompanied minor boy whose interview was scheduled for January 2022 by the RAO of **Piraeus**;
- ❖ The case of an unaccompanied minor girl from India whose interview was scheduled for January 2022 by the RAO of **Athens**;
- ❖ The case of a Turkish whose interview was scheduled for 2024 by the RAO of **Athens**;
- ❖ A number of applications of Pashtu speakers, which have been postponed due to lack of Pashtu interpretation and have been rescheduled for 2022 by the RAO of **Piraeus**;

<sup>177</sup> Information provided by the Asylum Service, 17 February 2020.

<sup>178</sup> *Ibid.*

<sup>179</sup> Information provided by the Asylum Service, 17 February 2020.

<sup>180</sup> Case numbers on file with the author.



- ❖ The case of a single parent Afghani family (one the children of the family faced a severe health issue) whose interview has been rescheduled for June 2022 by the RAO of **Piraeus**.

Taking into consideration the number of applications pending for more than 6 months and the number of applications pending without an interview having been conducted (81.6%), as well as the suspension of all activities of the Asylum Service from 11 March to 15 May 2020 due to Covid-19, the backlog of cases pending for prolonged periods is likely to increase in the future.

As noted by UNHCR “delays in interview scheduling times all over Greece are indicative of the extent of the current challenges. In **Attica**, the Fast-track Syria Unit applicants receive interview appointments for 2021, while in **Thessaloniki** interview dates are currently given for 2024 for applicants from Turkey, Iran and Afghanistan, and for late 2023 for Iraq and for African countries. While the Asylum Service has issued a large number of decisions in 2018 (46,155 in total), demonstrating the positive results of its capacity enhancement, the size of the caseload and the constant increase in the number of new asylum applications requires further significant increase in capacity and performance of the Asylum Service”.<sup>181</sup>

## 1.2. Prioritised examination and fast-track processing

The IPA that entered into force 1 January 2020 sets out two forms of prioritised examination of asylum applications.

First, the Asylum Service shall process “by way of absolute priority” claims concerning:

- (a) Applicants undergoing reception and identification procedures who do not comply with an order to be transferred to another reception facility;<sup>182</sup>
- (b) Applicants who are detained.<sup>183</sup>

Processing by way of “absolute priority” means the issuance of a decision within 20 days.<sup>184</sup>

Second, the law provides that an application may be registered and examined by way of priority for persons who:<sup>185</sup>

- (a) Belong to vulnerable groups, insofar as they are under a “restriction of liberty” measure in the context of **Reception and Identification** procedures;
- (b) Fall under the scope of the **Border Procedure**;
- (c) Are likely to fall within the **Dublin Procedure**;
- (d) Have cases which may be considered as manifestly unfounded;
- (e) Represent a threat to national security or public order; or
- (f) File a **Subsequent Application**;
- (g) Come from a **First Country of Asylum** or a **Safe Third Country**;
- (h) Have cases reasonably believed to be well-founded.

In comparison to the previous Article 51(6) L 4375/2016, the new provision of the IPA has mainly introduced the abovementioned point (g) on the First country of Asylum and Safe Third Country as a new ground to trigger the use of fast-track procedures, as the latter was not foreseen in previous legislation.

Moreover, a fast-track procedure for the examination and the granting of refugee status to Syrian nationals and stateless persons with former habitual residence in Syria, is in place since September 2014. Eligible

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<sup>181</sup> UNHCR, Communication in the *M.S.S. and Rahimi groups v. Greece* case (Applications No.30696/09, 8687/08), 15 May 2019.

<sup>182</sup> Articles 39(1) and 83(7) IPA, citing Article 39(10)(c) IPA.

<sup>183</sup> *Ibid*, citing Article 46(8) IPA.

<sup>184</sup> *Ibid*.

<sup>185</sup> Articles 39(2) and 83(7) IPA.

for the fast-track procedure are only the Syrians and stateless persons with former habitual residence in Syria in case that:

- a) they hold original documents (especially passports) or;
- b) they have been identified as Syrian/persons with former habitual residence in Syria within the scope of the Reception and Identification Procedure, under the conditions that the EU-Turkey Statement is not applicable in their case, i.e. have been exempted by the "Fast-Track Border Procedure".<sup>186</sup>

In 2019, a total of 3,690 positive decisions were issued in the framework of the Syria fast-track procedure, compared to 3,531 in 2018, 2,986 in 2017 and 913 in 2016.<sup>187</sup>

### 1.3. Personal interview

#### Indicators: Regular Procedure: Personal Interview

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the regular procedure?  Yes  No  
❖ If so, are interpreters available in practice, for interviews?  Yes  No
2. In the regular procedure, is the interview conducted by the authority responsible for taking the decision?  Yes  No
3. Are interviews conducted through video conferencing?  Frequently  Rarely  Never

According to the IPA, the personal interview with the applicant may be omitted where:<sup>188</sup>

- a) The Asylum Service is able to take a positive decision on the basis of available evidence;
- b) It is not practically feasible, in particular when the applicant is declared by a medical professional as unfit or unable to be interviewed due to enduring circumstances beyond their control.

In comparison, the previous L.4375/2016 also foresaw that, "when the applicant or, where applicable, a family member of the applicant was not provided with the opportunity of a personal interview due to their being unfit or unable to be interviewed, the Police or Asylum Service had to "make reasonable efforts" to provide them with the possibility to submit supplementary evidence."<sup>189</sup> This provision has been abolished by the IPA.

Nevertheless, the previous provision of L.4375/2016 which foresaw that the omission of a personal interview does not adversely affect the decision on the application - as long as the decision states the reasons for omitting the interview - remained in the new IPA.<sup>190</sup>

Moreover the IPA provides that, where the interview has been scheduled within 15 days from the lodging of the application and where the applicant is vulnerable, the authorities provide him or her with reasonable time not exceeding 3 days so as to prepare for the interview and obtain counselling. The possibility to request reasonable time is not granted to asylum seekers who are not vulnerable or whose interview has been scheduled more than 15 days after the submission of the application.<sup>191</sup>

As mentioned in [Regular Procedure: General](#), significant delays continue to be observed in 2019 with regard to the conduct of interviews. The interview has not been conducted in 71,396 applications, which amounts to 81.6% of the total number of applications pending at the end of 2019. In 23,519 of these

<sup>186</sup> Information provided by the Asylum Service, 17 February 2020.

<sup>187</sup> *Ibid.*

<sup>188</sup> Article 77(7) IPA.

<sup>189</sup> Article 52(9) L 4375/2016.

<sup>190</sup> Article 77(9) IPA.

<sup>191</sup> Article 77(4) IPA.

cases, the interview has been scheduled within the first semester of 2020, while in the rest, namely 47,877 cases the interview is scheduled within the second semester of 2020 or even after 2020.<sup>192</sup> In a number of cases, interviews were set more than 2 years after the registration of the application, while cases of rescheduled interviews were set with great delays.

Under the regular procedure, the interview takes place at the premises of the RAO on the designated day and is conducted by one caseworker.

Since September 2018, the geographical limitation of vulnerable asylum seekers is lifted at the time of the registration or once the vulnerability is identified. Following the lift of the geographical limitation they are allowed to leave the island and travel the mainland. The pending regular procedure interview of applicants transferred to the mainland in the scope of transfers organised by the Ministry of Migration Policy, are rescheduled before a RAO or a AAU of the mainland.<sup>193</sup> Applicants who - following the lift of the geographical limitation and the referral of their case to the regular procedure - travelled from the islands to the mainland by their own means, will have to return on said island in order to undergo their regular procedure interview.

According to both L.4375/2016 and the new IPA, the personal interview takes place without the presence of the applicant's family members, unless the competent Asylum Service Officer considers their presence necessary.<sup>194</sup> Moreover, the personal interview must take place under conditions ensuring appropriate confidentiality.<sup>195</sup> However, GCR has expressed concerns relating to confidentiality in certain RAO or AAU due to the lack of appropriate spaces. This is for example the case in the RAO of **Samos**, where the office used for the interview cannot guarantee confidentiality because of the inadequacy of the facility.

According to both L.4375/2016 and the new IPA, the person conducting the interviews should be sufficiently qualified to take into account the personal or general circumstances regarding the application, including the applicant's cultural origin. In particular, the interviewer must be trained concerning the special needs of women, children and victims of violence and torture.<sup>196</sup> In case of female applicants, the applicant can request a case worker/interpreter of the same sex. If this is not possible, a note is added to the transcript of the interview.<sup>197</sup>

### **EASO's role in the regular procedure**

Prior to L 4540/2018, only Asylum Service caseworkers could conduct interviews in the regular procedure, as opposed to the [Fast-Track Border Procedure: Personal Interview](#). In case of applications referred from the fast-track border procedure to the regular procedure following an interview held by an EASO officer (e.g. due to vulnerability), a supplementary first instance interview should be conducted by an Asylum Service caseworker.<sup>198</sup>

Following the amendments introduced by L 4540/2018, which have been maintained in the IPA,<sup>199</sup> EASO can now be involved in the regular procedure,<sup>200</sup> while the EASO personnel providing services at the Asylum Service premises are bound by the Asylum Service Rules of Procedure.<sup>201</sup> EASO caseworkers

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<sup>192</sup> Information provided by the Asylum Service, 17 February 2020.

<sup>193</sup> Information provided by the Asylum Service, 17 February 2020.

<sup>194</sup> Article 77(10) IPA.

<sup>195</sup> Article 77(11) IPA.

<sup>196</sup> Article 77(12)(a) IPA.

<sup>197</sup> Article 77(5) IPA.

<sup>198</sup> Information provided by the Asylum Service, 26 March 2019.

<sup>199</sup> Article. 65(16) IPA.

<sup>200</sup> Article 65(16) IPA.

<sup>201</sup> Article 1(2) Asylum Service Director Decision No 3385 of 14 February 2018.

have started conducting interviews under the regular procedure since the end of August 2018.<sup>202</sup> The main form of support provided by EASO caseworkers involves the conduct of interviews with applicants and drafting of opinions to the Asylum Service, which retains responsibility for issuing a decision on the asylum application.

Contrary to the fast-track border procedure, EASO support in the regular procedure in Greece is provided solely through Interim Experts deployed to the Asylum Service. This is due to an express requirement in the law for personnel to be Greek speakers.<sup>203</sup> Accordingly, both interviews and eligibility opinions are done in Greek, albeit using the same structure as those in the fast-track border procedure.

As of July 2019, there were approximately 60 EASO caseworkers involved in the fast-track border procedure and 30 in the regular procedure.<sup>204</sup> Moreover, during the first half of 2019, EASO conducted 1,685 interviews and delivered 1,363 opinions in the regular procedure, which marks a significant increase compared to 2018.<sup>205</sup> During the whole year of 2018, EASO had conducted only 841 interviews and delivered 461 opinions, way below what was achieved in the first half of the year 2019.<sup>206</sup> While figures for the whole year 2019 are not available, the role of EASO in the regular procedure is likely to increase as EASO announced that Agency's operations in Greece are expected to double in size to over 1,000 personnel in 2020.<sup>207</sup>

### 1.3.1. Quality of interviews and decisions

The Asylum Service has established quality assurance and control mechanisms throughout the whole asylum procedure and has a dedicated Training, Quality and Documentation Department to that end.<sup>208</sup> Caseworkers of the Asylum Service are advised to discuss their case with a supervisor or a more experienced caseworker in case of doubt or ambiguity regarding the examination of the asylum claim. Moreover, they have access to a database managed by the Training, Quality and Documentation Department of the Asylum Service, which contains selected first instance decisions that have met certain quality standards. The database is classified by country of origin and type of asylum claim.<sup>209</sup>

Moreover, the Training, Quality and Documentation Department conducts quality checks on a sample of interviews and first-instance decisions and provides opinions and recommendations on the latter. Quality reports based on first instance decisions are also drafted by RAOs, which may subsequently organise relevant sessions, although no further information was provided in this regard.<sup>210</sup> Nevertheless, quality reports are not made publicly available.

In addition, UNHCR supports the Asylum Service with experts who advise the Asylum Service caseworkers upon request on how to conduct interviews, draft decisions on asylum applications and provide on-the-job training. UNHCR assisted in 12,750 instances in 2019.<sup>211</sup>

As stated by UNHCR in May 2019, "while the quality of first instance examination remains largely in line with international and European recommended standards and procedural safeguards, UNHCR has

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<sup>202</sup> Information provided by EASO, 13 February 2019.

<sup>203</sup> Article 65(16) IPA.

<sup>204</sup> ECRE, *The Role of EASO Operations in national asylum systems*, November 2019, available at: <https://bit.ly/3cSt5rs>, 11.

<sup>205</sup> Ibid.

<sup>206</sup> Ibid.

<sup>207</sup> EASO, 'EASO operations in Greece to expand significantly' 28 January 2020, available at: <https://bit.ly/3cMwXu5>.

<sup>208</sup> ECRE, *Asylum authorities: An overview of internal structures and available resources*, October 2019, available at: <https://bit.ly/2Trh98o>, 51.

<sup>209</sup> Ibid. 54

<sup>210</sup> Ibid. 55.

<sup>211</sup> UNHCR, Factsheet: Greece, 1-31 December 2019.

observed a deterioration in quality at first instance as a result of the pressure resulting from the large pending caseload [...] Applications are being examined as fast as possible by a team of caseworkers, many of whom are new and not sufficiently trained and supported locally”.<sup>212</sup> Without underestimating the fact that the recognition rate of the first instance procedure remains high, at 55.9% of in-merit decisions issued in 2019,<sup>213</sup> GCR is aware of a number of first instance cases in 2019 where the way the interview was conducted, the assessment of the asylum claims and/or the decisions delivered raise issues of concern.

Among others, these concern the conduct of the interview, the non-examination of crucial facts of the case, the credibility assessment and the wrong use of country of origin information (COI). For example:

- In the case of an Iranian applicant whose claim related to the fact that he was bisexual and he had an affair with another man, the caseworker posed rather inappropriate and intimate questions in order to assess the credibility of the applicant.<sup>214</sup>
- Two cases of unaccompanied minors handled by the same caseworker, where the applicants have been rejected, following personal interviews that lasted less than an hour. Although there were strong indications that they could be victims of economic exploitation and human trafficking, no thorough examination of the above critical circumstances took place and therefore the latter were not properly assessed in the scope of the decision.<sup>215</sup>
- In the case of a Kurdish Iranian, the decision failed to assess the claims of the applicant regarding his Kurdish origin, as well as regarding the fact that he has been detained and tortured.<sup>216</sup>

As regards the quality of interviews of opinions delivered by EASO caseworkers in the regular procedure, quality control mechanisms have been set up by the Asylum Service, i.e. a review of decisions, which include the corresponding EASO opinions as part of each reviewed case file.<sup>217</sup> Any concerns or observations relating to quality are communicated to EASO. The Quality Assurance Units of the Asylum Service and EASO have organised joint briefings on the islands building on the results of the review of decisions by both units. ECRE’s report on the role of EASO in national asylum systems details the multi-layered Quality Assurance system that has been put in place in Greece.<sup>218</sup>

### 1.3.2. Interpretation

The law envisages that an interpreter of a language understood by the applicant be present in the interview.<sup>219</sup> Interpretation is provided both by interpreters of the NGO METAdrasi and EASO’s interpreters. The capacity of interpretation services remains challenging. The use of remote interpretation has been observed especially in distant RAO and AAU. When it comes to rare languages, if no interpreter is available to conduct a direct interpretation from that language to Greek (or English in cases examined by EASO case workers), more interpreters might be involved in the procedure.

Although interpretation is one of the core rights of the applicants in the scope of the asylum procedure, GCR has been aware of cases in 2019 in which the provision of interpretation has been of poor quality. For example:

- During the examination of an unaccompanied minor girl who claimed to be victim of abuse, the caseworker asked her how often the alleged abusive incidents were taking place. The minor

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<sup>212</sup> Information provided by UNHCR, 15 May 2019.

<sup>213</sup> Information provided by the Asylum Service, 17 February 2020. The EU-28 first instance recognition rate in 2019 was 38.8% (including decisions on humanitarian grounds): Eurostat, *First instance decisions on asylum applications by type of decision - annual aggregated data*, available at: <https://bit.ly/3exCvd1>.

<sup>214</sup> Decision and transcript on file with the author

<sup>215</sup> Decisions on file with the author

<sup>216</sup> Decision on file with the author

<sup>217</sup> ECRE, *The Role of EASO Operations in national asylum systems*, November 2019, available at: <https://bit.ly/3cSt5rs>, 15.

<sup>218</sup> *Ibid*, 15-16.

<sup>219</sup> Article 77(3) IPA.

answered -amongst other- that the incidents took place 'every day', fact that has been omitted by the interpreter. Due to the fact that the lawyer of the minor underlined this omission, the caseworker came back asking specifically if the abusive incidents took place every day, only to receive a positive answer by the girl.

- In a case where the applicant claimed that he has been persecuted due to the fact that he had converted to Christianity, the interpreter appointed for the case was not aware of and therefore could not interpret words related to the religion such as Easter, Pentecost, etc.

Moreover, often enough, the good quality of remote interpretation is hindered by technical deficiencies and constraints.

### 1.3.3. Recording and transcript

The IPA envisages audio recording of the personal interview. A detailed report is drafted for every personal interview, which includes the main arguments of the applicant for international protection and all its essential elements. Where the interview is audio recorded, the audio recording accompanies the report. For interviews conducted by video-conference, audio recording is compulsory. Where audio recording is not possible, the report includes a full transcript of the interview and the applicant is invited to certify the accuracy of the content of the report by signing it, with the assistance of the interpreter who also signs it, where present.<sup>220</sup> The applicant may at any time request a copy of the transcript, a copy of the audio file or both.<sup>221</sup>

## 1.4. Appeal

### Indicators: Regular Procedure: Appeal

1. Does the law provide for an appeal against the first instance decision in the regular procedure?  
 Yes  No  
  
❖ If yes, is it  Judicial  Administrative  
❖ If yes, is it suspensive  Yes  Some grounds  No
2. Average processing time for the appeal body to make a decision: Varies

By the end of 2019, a twofold procedural framework for the examination of appeals against negative first instance decisions remained in place. Appeals submitted after 21 July 2016, i.e. after the operation of the new Independent Appeals Committees under the Appeals Authority, were examined by these Independent Appeals Committees. Appeals against decisions on applications lodged before 7 June 2013, i.e. before the operation of the Asylum Service, and appeals submitted until 20 July 2016 against decisions rejecting applications for international protection lodged after 7 June 2013,<sup>222</sup> were examined by the "Backlog Committees" under PD 114/2010. No "Backlog Committees" were operational during 2019. Due to non-operation of said Committees, about 3,500 appellants have therefore been waiting for years in order for the examination of their asylum application to be finalised.<sup>223</sup>

The IPA provides that the appeals that are pending before the Backlog Committees are deemed to be rejected by an Act of the Director of the Appeals Authority upon entry into force of the IPA,<sup>224</sup> unless the concerned appellants appear in person before the Appeals Authority within six months upon publication

<sup>220</sup> Article 77(13)-(15) IPA.

<sup>221</sup> Article 77(13)-(15) IPA. .

<sup>222</sup> Article 80(4) L 4375/2016, as amended by Article 28(22) L 4540/2018.

<sup>223</sup> For the composition and the Procedure before the "Backlog Committees" see AIDA, Report on Greece, update 2018, March 2019.

<sup>224</sup> Article 113(1) IPA.

of the IPA. They must further confirm through a written statement that they wish the examination of their appeals.<sup>225</sup> The examination of those appeals, for which the appellant submitted said written statement, is scheduled with an Act of the Director of the Appeals Authority before the Independent Appeals Authorities of the Appeals Authority.<sup>226</sup> Thus, since the entry into force of the IPA on 1 January 2020, the Independent Appeals Committees are the sole administrative bodies competent for the examination of Appeals lodged against first instance asylum decisions.

### **Establishment and Composition of the Independent Appeals Committees of the Appeals Authority**

The legal basis for the establishment of the Appeals Authority was amended several times in recent years and has been further amended by the IPA.<sup>227</sup>

Following, reported pressure on the Greek authorities by the EU with regard to the implementation of the EU-Turkey Statement<sup>228</sup> and “coincide[ing] with the issuance of positive decisions”<sup>229</sup> of the former Backlog Committees, who did not consider Turkey to be a safe third country in a number of cases, its composition was amended by L 4375/2016 in April 2016 and L 4399/2016 in June 2016. The composition of the Appeals Authorities changed, with the participation of two active Administrative Judges in the new three-member Appeals Committees (*Ανεξάρτητες Αρχές Προσφυγών*). The third member was a person, holding a university degree in Law, Political or Social Sciences or Humanities with specialisation and experience the fields of international protection, human rights or international or administrative law.<sup>230</sup>

The amendments further restricted the right of the appellant to request an oral hearing before the Appeals Committees. As already noted the modification of the composition of the Appeals Committees and the participation of active administrative Judges raised questions on the compatibility of said reform with the Constitution and compliance with the right to an effective remedy, which however have been rejected by the Council of State.<sup>231</sup>

Appeals Committees with said composition remained active by the end of November 2019. The composition of the Appeals Committees was amended again by the IPA. While the IPA itself entered into force on 1 January 2020, the amendments regulating specifically the composition of the Appeals Committee entered into force already on 1 December 2019. According to the latter, the three-member Appeals Committees are composed by three active Administrative Judges. Moreover, a single member/Judge Committee has been introduced.<sup>232</sup>

These amendments have been highly criticised and issues of unconstitutionality have been raised due to the composition of the Committees exclusively by active Administrative Judged *inter alia* by the Union of

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<sup>225</sup> Article 113(2) IPA.

<sup>226</sup> Article 113(4) IPA.

<sup>227</sup> More precisely, it was amended twice in 2016 by L 4375/2016 in April 2016 and L 4399/2016 in June 2016, in 2017 by L 4461/2017 and in 2018 by L 4540/2018

<sup>228</sup> New Europe, ‘EU Council: Why Greece should consider Turkey safe for Syrian refugees’, 9 June 2016, available at: <http://bit.ly/2lWDYOa>; Keep Talking Greece, ‘EU presses Greece to change asylum appeal committees that consider “Turkey is not a safe country”’, 11 June 2016, available at: <http://bit.ly/2kNWR5D>.

<sup>229</sup> NCHR, Public Statement regarding the amendment of the composition of the Independence Appeals Committees, 17 June 2016, available at: <http://bit.ly/2k1Buhz>. Unofficial translation by the author.

<sup>230</sup> Art. 5 L. 4375/2016 as amended; the third member is appointed by UNHCR or the National Commissioner for Human Rights if UNHCR is unable to appoint one. If both are unable, the (now) Minister for Migration Policy appoints one.

<sup>231</sup> See in details AIDA, *Country Report Greece: 2018 Update*, March 2019.

<sup>232</sup> Article 116(2) and (7) IPA.

Administrative Judges,<sup>233</sup> and the Union of Bar Associations.<sup>234</sup> As already stated by the Council of State as regards single members of administrative bodies composed by active Judges, “it is not permitted to delegate to a member of the judiciary the administrative functions of a single-member body, regardless whether or not that body has a disciplinary, supervisory or judicial character. This is due to the fact that in the case of a single-member body, the responsibility becomes personal to the maximum extent and as a result there is a risk for the member of the judiciary to be challenged in a court of law in respect of their decisions as a single-member body”.<sup>235</sup>

### EASO’s role at second instance

Since 2017, the law foresees that “in case of a large number of appeals”, the Appeals Committees might be assisted by “rapporteurs” provided by EASO.<sup>236</sup> These rapporteurs have access to the file and are entrusted with the drafting of a detailed and in-depth report, that will contain a record and edit of the facts of the case along with the main claims of the appellant, as well as a matching of said claims (*αντιστοίχιση ισχυρισμών*) with the country of origin information that will be presented before the competent Committee in order to decide.<sup>237</sup> The IPA maintained the same tasks for “rapporteurs” provided by EASO.<sup>238</sup> However, according to the IPA, this is not only foreseen “in case of a large number of appeals”. Article 95(4) IPA stipulates that each member of the Appeals Committee may be assisted by “rapporteurs” provided by EASO.

20 Independent Appeals Committees were operational by the end of 2019.<sup>239</sup> Following the amendment introduced by L 4661/2017, 22 rapporteurs were made available to the Appeal Authority, of whom 11 were deployed to the Appeals Authority by EASO in the course of 2019.<sup>240</sup> Currently, 12 Rapporteurs/Research Officers support the Independent Appeals Committees to issue 2<sup>nd</sup> instance decisions timely<sup>241</sup>. Since they are seconded to the individual Committees, these Rapporteurs are not supervised or line-managed by EASO.<sup>242</sup>

### Number of appeals and recognition rates at second instance

A total of 15,378 appeals were lodged in front of the Independent Appeals Committees in 2019.<sup>243</sup>

Appeals before the Independent Appeals Committees: 2019	
Nationality	Appeals lodged
Pakistan	5,103
Albania	2,140
Afghanistan	1,426

<sup>233</sup> Union of Administrative Judges, *Υπόμνημα Ενόψει της συζήτησης του σχεδίου νόμου του Υπουργείου Προστασίας του Πολίτη «Περί Διεθνούς Προστασίας και άλλες διατάξεις»*, 30 October 2019, available in Greek at: <https://bit.ly/376ZGXW>, para 8.

<sup>234</sup> Union of Bar Associations, ‘Επιστολή του Προέδρου της Ολομέλειας των Δικηγορικών Συλλόγων προς τον Υπουργό Προστασίας του Πολίτη για το σχέδιο νόμου για τη Διεθνή Προστασία’, 25 October 2019, available in Greek at: <https://bit.ly/32KGSKL>.

<sup>235</sup> Council of State, Decision 2980/2010.

<sup>236</sup> Article 62(6) L 4375/2016, as inserted by Article 101(2) L 4461/2017.

<sup>237</sup> Article 62(6) L 4375/2016, Article 95(5) IPA.

<sup>238</sup> Article 62(6) L 4375/2016, Article 95(5) IPA.

<sup>239</sup> Joint Ministerial Decision 1061/2019, Gov. Gazette 1035/6-12-2019. See also the previous Joint Ministerial Decision No 17403/2018, Gov. Gazette 3710/B/29-8-2018.

<sup>240</sup> EASO, *Operating Plan to Greece 2019*, 19 December 2018, available at: <https://bit.ly/2W6vJB2>, p. 16.

<sup>241</sup> EASO, *Operational & Technical Assistance Plan to Greece*, 20 December 2019, available at: <https://bit.ly/3d1A9Sd>, 14-15.

<sup>242</sup> ECRE, *The role of EASO operations in national asylum systems*, November 2019, available at: <https://bit.ly/2VNULrd>, 18

<sup>243</sup> Information provided by the Appeals Authority, 6 March 2019.



Iraq	1,357
Bangladesh	1,233
Other	4,119
<b>Total</b>	<b>15,378</b>

Source: Appeals Authority, 26 April 2020.

The Independent Appeals Committees took 14,573 decisions in 2019 out of which 10,531 on the merits:

Decisions on the merits by the Independent Appeals Committees: 2019			
Refugee status	Subsidiary protection	Humanitarian protection	Rejection
312	313	640	9,266

Source: Appeals Authority, 26 April 2020.

The remaining decisions taken by the Appeals Committees concerned inadmissible applications, appeals filed after the expiry of the deadline or in case that the application has been interrupted.<sup>244</sup>

The launch of the operation of the Independent Appeals Committees after L 4399/2016 has led to a significant drop in the second instance recognition rate of international protection, which has been highly criticised by a number of actors, including the Athens Bar Association.<sup>245</sup>

From 2016 to 2019, the recognition rates were as follows:

Recognition rates at second instance: 2016-2019					
Year	Refugee rate	Subsidiary protection rate	Humanitarian protection rate	Total recognition rate	Total rejection rate
2016	0.37%	0.07%	0.67%	1.11%	98.89%
2017	1.84%	0.99%	3.54%	2.83%	93.63%
2018	2.8%	1.5%	4.5%	4.3%	91%
2019	2.9%	2.9%	6.07%	5.93%	87.9%

Source: Information provided by the Appeals Authority in absolute numbers. Calculations made by GCR. The figures for the year 2016 refer to the period from 21 July to 31 December 2016 only.

The above figures demonstrate that, despite a slight increase since 2016, the recognition rates remain overwhelmingly low at second instance.

### Time limits for lodging an Appeal before the Appeals Committees

An applicant may lodge an Appeal before the Appeals Committees against a first instance decision of the Asylum Service rejecting the application for international protection.<sup>246</sup>

<sup>244</sup> Information provided by the Appeals Authority, 6 March 2019.

<sup>245</sup> Athens Bar Association, *Επιτροπή για θέματα Προσφύγων και Μεταναστών: Ασυλο, προβλήματα στη λειτουργία των Επιτροπών Προσφυγών και ανάγκη μεγαλύτερης αξιοποίησης των δικηγόρων*, 21 September 2017, available in Greek at: <http://bit.ly/2orUlPv>.

<sup>246</sup> Article 61(1)(a)-(b) L 4375/2016, as amended by L 4399/2016, Article 92(1) IPA.

According to L 4375/2016, in force until the end of 2019, an applicant was entitled to lodge an appeal against the decision rejecting the application for international protection as unfounded under the regular procedure, as well as against the part of the decision that granted subsidiary protection for the part rejecting refugee status, within 30 days from the notification of the decision.<sup>247</sup> In cases where the appeal was submitted while the applicant was in detention, the appeal should be lodged within 15 days from the notification of the decision.<sup>248</sup>

Since the implementation of IPA, the aforementioned deadlines were modified as follows: an applicant may lodge an appeal before the Appeals Committees against the first instance decision of the Asylum Service rejecting the application for international protection as unfounded under the regular procedure, as well as against the part of the decision that grants subsidiary protection for the part rejecting refugee status, within 30 days from the notification of the decision or from the date he or she is presumed to have been notified thereof.<sup>249</sup> In cases where the appeal is submitted while the applicant is in detention, the appeal should be lodged within 20 days from the notification of the decision.<sup>250</sup>

In this regard it should be noted that the IPA further introduced the possibility of a ‘fictitious service’ (*πλασματική επίδοση*) of the first instance decisions, with a registered letter sent by the Asylum Service to the applicant or by communicating the decision to the authorised lawyers, consultants, representatives, or the Head of the Regional Asylum Office/Independent Asylum Unit where the application was lodged or the Head of the Reception or Accommodation Centre.<sup>251</sup> From the day following the (fictitious) service, the deadline for lodging a legal remedy shall begin. Moreover, according to the IPA, once a lawyer is appointed by the applicant at any stage of the procedure, the lawyer is considered as a representative of the applicant for all stages of the procedures, including the service of the decision regardless of the actual representation of the applicant at the time of the fictitious service, unless the appointment of the lawyer will be revoked by a written declaration of the applicant with an authenticated signature.<sup>252</sup>

Due to the provision of the possibility of a “fictitious” service of the first instance decision, from the day following which, the deadline for lodging a legal remedy begins, the deadlines for submitting an appeal against a negative first instance decision may expire without the applicant being actually informed about the decision, for reasons not attributable to him/her. As the Greek Ombudsman has noted with regards the provisions of fictitious service, said provisions effectively limit the access of asylum seekers to legal remedies.<sup>253</sup>

## Form of the Appeal

Under the legislation in force until the end of 2019, with the exception of the aforementioned deadlines no particular admissibility requirements were provided by L. 4375/2016 in order for an appeal to be examined on the merits. In practice an applicant could by himself/herself declare before the Asylum Service upon the notification of the first instance negative decision his/her wish to appeal, the Asylum Service filed out an Appeal Form and then the case was transmitted for examination before the Appeals Committees, which was entitled to proceed in a full and *ex nunc* examination of both facts and points of law of the case on the basis of the content of the file. Additionally a legal note or any additional documents could be submitted before the Appeals Committees, two days before the day of the examination the latest.<sup>254</sup> The procedure followed until the end of 2019, i.e. a procedure in which the applicant could lodge an appeal

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<sup>247</sup> Article 61(1)(a) L 4375/2016, as amended by L 4399/2016.

<sup>248</sup> Article 61(1)(b) L 4375/2016, as amended by L 4399/2016.

<sup>249</sup> Article 92(1)(a) IPA.

<sup>250</sup> Article 92(1)(b) IPA.

<sup>251</sup> Article 82 and 103 IPA.

<sup>252</sup> Article 71 (7) IPA.

<sup>253</sup> Ombudsman, *Παρατηρήσεις στο σχέδιο νόμου Προσαρμογή της Ελληνικής Νομοθεσίας προς τις διατάξεις της Οδηγίας 2013/33/ΕΕ (αναδιάρθρωση 29.6.13) σχετικά με τις απαιτήσεις για την υποδοχή των αιτούντων διεθνή προστασία κ.ά. διατάξεις*, April 2018.

<sup>254</sup> Art. 61 and 62 L. 4375/2016.

himself/herself without the support of a lawyer, was a minimum guarantee that access to the appeals procedure was not hindered due to the shortages of the provision of free legal aid, given the significant gaps in the provision of free legal aid scheme.

The IPA in force since 1 January 2020 has radically amended these provisions. According to Article 93 IPA, the Appeal should *inter alia* be submitted in a written form (in Greek) and mention the “specific grounds” of the Appeal. If these conditions are not fulfilled the Appeal is rejected as inadmissible without an examination on the merits.

Said provision has been largely criticized as severely restricting access to the appeal procedure in practice, and seems to be in contradiction with EU law, namely Article 46 of the recast Asylum Procedures Directive and Article 47 of the EU Charter of Fundamental rights. The requisites set by Article 93 IPA, in practice, can only be fulfilled when a lawyer assists the applicant, which is practically impossible in the majority of the cases, by taking into consideration the gaps in the provision of free legal aid. *Inter alia* and as stated by the UNHCR, “[i]n some circumstances, it would be so difficult to appeal against a rejection that the right to an effective remedy enshrined in international and EU law, would be seriously compromised”.<sup>255</sup>

### **Suspensive effect**

Appeals before the Appeals Authority had automatic suspensive effect in all procedures under the previous law.<sup>256</sup> The IPA has abolished the automatic suspensive effect for certain appeals,<sup>257</sup> in particular those concerning applications rejected in the accelerated procedure or dismissed as inadmissible under certain grounds. In such cases, the appellant may submit an application before the Appeals Committees, requesting their stay in the country until the second-instance appeal decision is issued. However, considering the significant lack of an adequate system for the provision of free legal aid, it is questionable if such appellants will actually be able to submit the relevant request. Suspensive effect covers the period “during the time limit provided for an appeal and until the notification of the decision on the appeal”.<sup>258</sup>

More precisely according to Article 104 IPA, the appeal does not have an automatic suspensive effect in case of an appeal against a first instance decision rejecting the application as inadmissible: i) in case that another EU Member State has granted international protection status, ii). in virtue of the first country of asylum concept, iii). the application is a subsequent application, where no new elements or findings have been found during the preliminary examination; in case of an appeal against a second subsequent asylum application, and in a number of cases examined under the Accelerated Procedure.

### **Procedure before the Appeals Authority**

According to the IPA, the procedure before the Appeals Committee remains as a rule a written one and the examination of the Appeal is based on the elements in the case file.<sup>259</sup> According to the IPA, the Appeals Committees shall invite the appellant to an oral hearing when:<sup>260</sup>

- a) The appeal is lodged against a decision which withdraws the international protection status (see [Cessation](#) and [Withdrawal](#));
- b) Issues or doubts are raised relating to the completeness of the appellant’s interview at first instance;

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<sup>255</sup> UNHCR, UNHCR urges Greece to strengthen safeguards in draft asylum law, 24 October 2019.

<sup>256</sup> Article 104(1) IPA.

<sup>257</sup> Article 104(2) IPA.

<sup>258</sup> Article 104(1) IPA.

<sup>259</sup> Article 97(1) IPA.

<sup>260</sup> Article 97(3) IPA.

c) The appellant has submitted substantial new elements

Under the previous law (L 4375/2016), the appellant could also be invited to an oral hearing if the case presented particular complexity,<sup>261</sup> which is no longer the case. Moreover, despite the fact that the procedure before the Appeals Committees remains written as a rule. Articles 97(2) and 78(3) IPA impose the obligation to the appellant to personally appear before the Appeals Committee on the day of the examination of their appeals on penalty of rejection of their appeal as “manifestly unfounded”. This is an obligation imposed on the appellant even if he/she has not been called for an oral hearing.

Alternatively,

- i) an appointed lawyer can appear before the Committee on behalf of the appellant or
- ii) a written certification of the Head of the Reception/Accommodation Centre can be sent to the Committee in case the appellant resides in an accommodation centre, by which it is certified that he/she remains there or
- iii) a declaration signed by the appellant and the authenticity of the signature of the appellant is verified by the Police or the Citizens Service Centre (KEP), by which the appellant declares that he/she resides in the given accommodation/reception centre be sent to the Committee, prior of the date of the examination.

The extent to which applicants and the Administration itself (Reception/Accommodation Centre Supervisor) will be able to comply with these procedural requirements is questionable, considering the living conditions of a great number of asylum applicants on the islands and the mainland, and the administrative burden that the authorities managing the reception centres face. In any case, these provisions impose an unnecessary administrative obligation (in-person appearance of the applicant/lawyer as well as transmission of extra certifications) and further introduced a disproportionate “penalty”, as the in merits rejection of the Appeals without examination of the substance, raises serious concerns with regard to the effectiveness of the remedy. This obligation imposed by the IPA confirms the criticism that the new law on asylum “puts an excessive burden on asylum seekers and focuses on punitive measures. It introduces tough requirements that an asylum seeker could not reasonably be expected to fulfill”.<sup>262</sup>

Under L. 4636/2016 appeals were always examined by the three-member-Committees in a collegial format.<sup>263</sup> While the IPA also provides that appeals are examined under a collegial format,<sup>264</sup> it introduced an exception when it comes to appeals filed after the deadline as well as for certain appeals in the [Accelerated Procedure](#) and the [Admissibility Procedure](#), which should thus be examined by a single-judge.<sup>265</sup>

According to the law, the Appeals Committee must reach a decision on the appeal within 3 months when the regular procedure is applied.<sup>266</sup>

If the Appeals Committee rejects the appeal on the application for international protection but removal is not feasible due to a violation of the *non-refoulement* principle or other humanitarian grounds, it shall grant a ban on deportation on humanitarian grounds.<sup>267</sup> As mentioned above, 640 cases (6.07%) were referred as such in 2019.

L 4375/2016 foresaw the possibility of a fictitious service (*πλασματική επίδοση*) of second instance decisions in case of applications submitted by asylum seekers in detention or in RIC or where the applicant

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<sup>261</sup> Article 62(1)(d) L 4375/2016.

<sup>262</sup> UNHCR, UNHCR urges Greece to strengthen safeguards in draft asylum law, 24 October 2019.

<sup>263</sup> Article 5(2) L 4375/2016

<sup>264</sup> Article 116(2) IPA.

<sup>265</sup> Article 116(2) IPA.

<sup>266</sup> Article 101(1)(a) IPA.

<sup>267</sup> Article 104(4) IPA.

cannot be found at his or her contact address, telephone number etc. In these cases, the notification on the appeal could be made to the representative or lawyer of the appellant who signed the appeal or who was present during the examination of the appeal or submitted observations before the Appeals Committee, the Head of the RIC, or online on a specific database.<sup>268</sup> In case where a second instance decision had been notified under this procedure, the deadline for judicial review could expire without the appellant having been informed of the decision rejecting his or her appeal.

Similarly, to the fictitious service at first instance described above, the IPA expanded the fictitious service (*πλασματική επίδοση*) of second instance decisions as it is not restricted to applicants in detention or in RIC or where the applicant cannot be found at his or her contact address.<sup>269</sup> The IPA provides that the service of the second instance decision can take place with a registered letter or to the authorised lawyers, consultants, representatives, the Head of the Regional Asylum Office/Independent Asylum Unit, where the application was submitted or the Head of the Reception or Accommodation Centre.<sup>270</sup> From the day following the (fictitious) service, the deadline for lodging a legal remedy shall begin.

As a result of this provision on the possibility of a “fictitious” service of the second instance decision - which triggers the deadline for lodging an appeal - said deadlines for legal remedies against a negative second instance decision may expire without the applicant being actually informed about the decision.

Since the initial amendment of the legislation on the provisions of fictitious service the Greek Ombudsman has noted that the provisions “effectively limit the access of asylum seekers to judicial protection” and even if “the need to streamline procedures is understandable ... in a state governed by law, it cannot restrict fundamental democratic guarantees, such as judicial protection”.<sup>271</sup>

Persons whose asylum application is rejected at second instance no longer have the status of “asylum seeker”,<sup>272</sup> and thus do not benefit from reception conditions.

#### 1.4.1. Judicial review

According to L 4375/2016, applicants for international protection might lodge an application for annulment (*αίτηση ακύρωσης*) of a second instance decision of the Appeals Authority Committees<sup>273</sup> before the Administrative Court of Appeals<sup>274</sup> within 60 days from the notification of the decision. As mentioned above, the deadline can start running even with a fictitious notification (*πλασματική επίδοση*). The possibility to file an application annulment, the time limits, as well as the competent court for the judicial review, must be expressly stated in the body of the administrative decision. Following the application for annulment, an application for suspension (*αίτηση αναστολής*) can be filed.

Since the entry into force of the IPA, applicants for international protection may lodge an application for annulment (*αίτηση ακύρωσης*) of a second instance decision of the Appeals Authority Committees solely before the Administrative Court of First Instance of Athens or Thessaloniki<sup>275</sup> within 30 days from the notification of the decision.<sup>276</sup>

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<sup>268</sup> Article 62(8) L 4375/2016, as inserted by Article 28(20) L 4540/2018.

<sup>269</sup> Article 82 and 103 IPA.

<sup>270</sup> Article 82 and 103 IPA.

<sup>271</sup> Ombudsman, *Παρατηρήσεις στο σχέδιο νόμου Προσαρμογή της Ελληνικής Νομοθεσίας προς τις διατάξεις της Οδηγίας 2013/33/ΕΕ (αναδιτύπωση 29.6.13) σχετικά με τις απαιτήσεις για την υποδοχή των αιτούντων διεθνή προστασία κ.ά. διατάξεις*, April 2018.

<sup>272</sup> Article 2(c) IPA.

<sup>273</sup> Article 34(e) L 4375/2016, as amended by Article 28(5) L 4540/2018.

<sup>274</sup> Article 64 L 4375/2016 citing Article 15(3) L 3068/2002, as amended by Article 49 L 3900/2010.

<sup>275</sup> Article 108 and 115 IPA.

<sup>276</sup> Article 109 IPA.

According to the IPA,<sup>277</sup> following the lodging of the application for annulment, an application for suspension/interim order can be filed. The decision on this single application for temporary protection from removal should be issued within 15 days from the lodging of the application.

The effectiveness of these legal remedies is severely undermined by a number of practical and legal obstacles:

- ❖ The application for annulment and application for suspension/interim order can only be filed by a lawyer. In addition, no legal aid is provided in order to challenge a second instance negative decision. The capacity of NGOs to file such application is very limited due to high legal fees. Legal aid may only be requested under the general provisions of Greek law,<sup>278</sup> which are in any event not tailored to asylum seekers and cannot be accessed by them in practice due to a number of obstacles. For example, the request for legal aid is submitted by an application written in Greek; free legal aid is granted only if the legal remedy for which the legal assistance is requested is not considered “manifestly inadmissible” or “manifestly unfounded”.<sup>279</sup>
- ❖ The application for annulment and application for suspension/interim order do not have automatic suspensive effect.<sup>280</sup> Therefore between the application of suspension/interim order and the decision of the court, there is no guarantee that the applicant will not be removed from the territory. During 2019, GCR was aware of cases where applicants have been removed to Turkey, while awaiting a decision of the competent Court to be issued on their application for suspension/interim order.
- ❖ The Administrative Court can only examine the legality of the decision and not the merits of the case.
- ❖ The judicial procedure is lengthy. GCR is aware of cases pending for a period of about two years for the issuance of a decision of the Administrative Court of Appeals following an application for annulment.

Moreover, according to Article 108(2) IPA, the Minister of Interior and Administrative Reconstruction and following his relevant replacement, the Minister of Migration Policy, also had the right to lodge an application for annulment against the decisions of the Appeals Committee before the Administrative Court.

#### 1.4.2. Legal assistance

Asylum seekers have the right to consult, at their own cost, a lawyer or other legal advisor on matters relating to their application.<sup>281</sup>

##### Legal assistance at first instance

No state-funded free legal aid is provided at first instance, nor is there an obligation to provide it in law. A number of non-governmental organisations provide free legal assistance and counselling to asylum seekers at first instance, depending on their availability and presence across the country. The scope of these services remains limited, taking into consideration the number of applicants in Greece and the needs throughout the whole asylum procedure – including registration of the application, first and second

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<sup>277</sup> Article 15(6) L 3068/2002, as amended by Article 115 IPA.

<sup>278</sup> Articles 276 and 276A Code of Administrative Procedure.

<sup>279</sup> *Ibid.*

<sup>280</sup> See e.g. ECtHR, *M.S.S. v. Belgium and Greece*, Application No 30696/09, Judgment of 21 January 2011.

<sup>281</sup> Article 71(1) IPA.

instance, judicial review and the complexity of the procedures followed, in particular after the entry into force of the IPA.

### Legal assistance at second instance

According to the IPA, free legal assistance shall be provided to applicants in appeal procedures before the Appeals Authority under the terms and conditions set in the Ministerial Decision 3686/2020.<sup>282</sup>

The first Ministerial Decision concerning the free legal aid to applicants, was issued in September 2016.<sup>283</sup> However, the state-funded legal aid scheme on the basis of a list managed by the Asylum Service started operating, for the first time in Greece, on 21 September 2017.

According to Ministerial Decision 3686/2020, currently in force,<sup>284</sup> regulating the state-funded legal aid scheme, asylum seekers must request legal aid at least 10 days before the date of examination of the appeal under the regular procedure, 5 days before the date of examination of the appeal under the [Accelerated Procedure](#) or the application has been rejected as inadmissible and 3 days before the date of examination of the appeal in case the appellant is in RIC or in case of revocation of international protection status. When Article 90(3) IPA (“fast track border procedure”) applies, the application for legal assistance is submitted at the time of lodging the appeal.<sup>285</sup> The decision also explicitly provides for the possibility of legal assistance through video conferencing in every Regional Asylum Office.<sup>286</sup> The fixed fee of the Registry’s lawyers has been raised from €120 (in 2019) to €160 per appeal.<sup>287</sup>

As of 31 December 2019 there were 37 registered lawyers on the list managed by the Asylum Service countrywide.<sup>288</sup> More precisely, registered lawyers were assigned in the following RAO/AAU:

Legal aid scheme managed by the Asylum Service: 2019	
Location	Lawyers
Attica	17
Thessaloniki	2
Thrace	4
Corinth	3
Lesvos	1
Rhodes	2
Chios	1
Kos	1
Crete	2
Ioannina	2
Western Greece (Patra)	2
<b>Total</b>	<b>37</b>

<sup>282</sup> Ministerial Decision 3686/2020, Gov. Gazette 1009/B/24-3-2020. MD 12205/2016 was repealed by MD 3686/2020 according to Article 6(2) MD 3686/2020.

<sup>283</sup> Ministerial Decision 12205/2016, Gov. Gazette 2864/B/9-9-2016.

<sup>284</sup> Ministerial Decision 3686/2020, Gov. Gazette 1009/B/24-3-2020. MD 12205/2016 was repealed by MD 3686/2020 according to Article 6(2) MD 3686/2020.

<sup>285</sup> Article 1(3) MD 3686/2020.

<sup>286</sup> Article 1(7) MD 3686/2020.

<sup>287</sup> Article 3 MD 3686/2020.

<sup>288</sup> Information provided by the Asylum Service, 17 February 2020.

Source: Asylum Service.

By the end of 2019, a total of 5,152 asylum seekers with applications rejected at first instance had benefited from the scheme,<sup>289</sup> compared to 3,351 assisted asylum seekers through the same scheme in 2018.

Without underestimating the efforts made to operate a state-funded legal aid scheme at second instance, and a certain increase of the number of appellants benefitting from the scheme in 2019, the figures illustrate that the capacity of the second instance legal aid scheme remains limited. The majority of appellants in 2019, as it was also the case in 2018, did not have access to the scheme.

More precisely, out of a total of 15,355 appeals lodged in 2018, only 3,351 (21.8%) asylum seekers benefited from the state-funded legal aid scheme.<sup>290</sup> In 2019, out of a total of 15,378 appeals lodged in 2019, only 5,152 (33 %) asylum seekers benefitted from the state-funded legal aid scheme. Therefore compliance of the Greek authorities with their obligations under national legislation and the recast Asylum Procedures Directive remains a matter of concern and should be further assessed. Moreover, the above figures demonstrate “an administrative practice incompatible with Union law, when it is to some degree, of a consistent and general nature”.<sup>291</sup>

In October 2019, the Dutch Council of State ruled against the Dublin transfer of an applicant to Greece, due to *inter alia* limited access to legal aid by international protection applicants in appeals procedures and its impact on access to effective remedies.<sup>292</sup>

## 2. Dublin

### 2.1. General

#### Dublin statistics: 2019

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
<b>Total</b>	<b>5,459</b>	<b>2,542</b>	<b>Total</b>	<b>12,718</b>	<b>33</b>
Germany	1,922	710	Germany	8,874	19
United Kingdom	1,230	591	Sweden	935	2
Sweden	375	253	Belgium	926	4
Switzerland	339	242	Italy	468	0
Netherlands	265	121	Croatia	321	0
France	263	78	Norway	242	0
Austria	179	91	Finland	122	0
Italy	171	83	Ireland	111	0
Belgium	155	75	Netherlands	74	0
Finland	136	86	Romania	56	0
Spain	87	40	Malta	52	0

Source: Asylum Service, *Statistical Data of the Greek Dublin Unit (7.6.2013 - 31.12.2019)*, 3 January 2020, available at: <https://bit.ly/3eBxzE7>.

<sup>289</sup> Information provided by the Asylum Service, 17 February 2020.

<sup>290</sup> Information provided by the Appeals Authority, 6 March 2019; Information provided by the Asylum Service, 26 March 2019.

<sup>291</sup> See CJEU, *Commission v Czech Republic*, Case C-525/14, EU C 2016 714, para 14.

<sup>292</sup> Dutch Council of State, Decision 3537/2019, 23 October 2019; EDAL, *The Netherlands: Assurances of access to legal aid required in transfers to Greece*, 23 October 2019, available at: <https://bit.ly/2z5yoou>.



There has been a slight increase in the number of outgoing requests compared to the previous year. In 2019, Greece addressed 5,459 outgoing requests to other Member States under the Dublin Regulation. Out of them, 2,936 requests were rejected by receiving Member states, 2,416 requests were expressly accepted and 107 were implicitly accepted. Thus, for the first time since the entry into force of the Dublin III Regulation, Greece received more rejections than acceptances of its outgoing requests.

Outgoing Dublin requests: 2014-2019						
Year	2014	2015	2016	2017	2018	2019
Number	1,126	1,073	4,886	9,784	5,211	5,459

Source: Asylum Service, *Statistical Data of the Greek Dublin Unit (7.6.2013 - 31.12.2019)*

Since 2017, the German Dublin Unit has shifted its practice following the *Mengesteab* ruling of the CJEU.<sup>293</sup> Soon after the judgment, it started rejecting “take charge” requests from Greece, where the applicant had expressed his or her will to seek international protection – before the Police – more than three months prior to the date of the “take charge” request. This was contrary to the practice established until then, whereby Germany accepted the lodging of the application by the Asylum Service as the starting point of the three-month deadline for the issuance of “take charge” requests. This shift resulted in increasing rejections of Greek outgoing requests as inadmissible. This interpretation has been used until today by the German Dublin Unit to routinely refuse responsibility for the examination of family reunification cases that are not submitted within three months from the date of an asylum-seeker’s expression of intention.

To avoid such rejections in the future, the Greek Dublin Unit notified all authorities involved in the First Reception and Registration and adjusted its practice to Germany’s interpretation by sending a “take charge” request within three months from the time of the registration of the will to seek international protection (*βούληση*). However, GCR is aware of a number of family reunification cases especially of newcomers trapped on the Aegean islands -amongst which cases of detainees and unaccompanied minors- who had suffered great delays between the will to apply for asylum and the registration of the application and successively in sending a potential ‘take charge’ request within said three months’ period.<sup>294</sup>

Moreover, another reason for the increase of rejections is the interpretation of the CJEU judgment in the Joined Cases C-47/17 and C-48/17<sup>295</sup> by the Dublin Units of some Member States. Following this judgment, the German Dublin Unit only accepts one re-examination request and refuses to keep cases open even when further medical tests for the establishment of the family link are pending, claiming that there is no possibility to deviate from the deadlines prescribed in the Dublin III Regulation. The Dutch Dublin Unit seems to follow the same practice.<sup>296</sup>

<sup>293</sup> CJEU, Case C-670/16 *Tsegezab Mengesteab v Bundesrepublik Deutschland*, Judgment of 26 July 2017, EDAL, available at: <https://bit.ly/2XvMKq2>.

<sup>294</sup> See also Refugee Support Aegean/Pro Asyl, ‘Refugee Families Torn Apart’, September 2019, available at: <https://bit.ly/2VxpAjX>.

<sup>295</sup> CJEU, Joined Cases C-47/17 and C-48/17, *X v. Staatssecretaris van Veiligheid en Justitie*, Request for a preliminary ruling, Judgment of 13 November 2018, available at: <https://bit.ly/2KpcqjA>.

<sup>296</sup> Information provided by the Dublin Unit, 31 January 2020.

### 2.1.1. The application of the Dublin criteria

The majority of outgoing requests continue to take place in the context of family reunification:

Outgoing and incoming Dublin requests by criterion: 2019		
Dublin III Regulation criterion	Outgoing	Incoming
Family provisions: Articles 8-11	3,275	91
Documentation: Articles 12 and 14	18	699
Irregular entry: Article 13	2	2,649
Dependent persons clause: Article 16	85	1
Humanitarian clause: Article 17(2)	1,496	30
“Take back”: Articles 18, 20(5)	583	9,214
<b>Total outgoing and incoming requests</b>	<b>5,459</b>	<b>12,718</b>

Source: Asylum Service, *Statistical Data of the Greek Dublin Unit (07.06.2013 - 31.12.2019)* 3 January 2020.

#### **Family unity**

Out of 3,275 outgoing requests based on family reunification provisions in 2019, 1,819 were accepted by other Member States.<sup>297</sup>

In order for a “take charge” request to be addressed to the Member State where a family member or relative resides, the written consent of this relative is required, as well as documents proving his/her legal status in the receiving country (e.g. residence permit, asylum seeker’s card or other documents certifying the submission of an asylum application) and documentation bringing evidence of the family link (e.g. certificate of marriage, civil status, passport, ID). According to GCR’s experience, an outgoing request will not be sent until the written consent of the relative and the documents proving the legal status in the other Member State have been submitted to the Greek Dublin Unit. However, if the available information in the case and the claim of the asylum seeker are coherent and credible, the Dublin Unit will send an outgoing request even without documents proving the family link.<sup>298</sup>

Furthermore, according to GCR’s experience, only documents provided in English or translated in English seem to be taken into account by the Dublin Units of other Member States, thus making it more difficult for the applicants to provide those. Moreover, there have been a few cases where the coloured photocopies of IDs or other official documents provided by the applicants were dismissed by the Dublin Units of some Member States which requested the submission of the original documents. The UK Home Office reportedly even contacts the British embassies in the country of origin to confirm the authenticity of the submitted documents. There have also been cases where Dublin Units of other Member States reject the “take charge” request, claiming that the relative residing there had not previously mentioned the existence of family members in another country. It occurs that for these cases the concerned persons were expected to refer to the existence of family members, in the scope of other administrative procedures, such as the issuance of a spouse visa, even though they had not been asked relevant questions concerning other family members.

The establishment of the family link is a crucial factor for the outcome of the “take charge” requests. The German Dublin Unit, for example, systematically uses information acquired through personal interviews, in order to reject a “take charge” request and never to accept it, although the information could (or rather,

<sup>297</sup> Information provided by the Asylum Service, 17 February 2020.

<sup>298</sup> Information provided by the Asylum Service, 17 February 2020.

should) be used to prove the family tie. Then, in case of lack of documentation, a DNA test seems to be the only solution and the German Dublin Unit has explicitly asked for the submission of the DNA test within the three-month deadline. Hence, it seems that the use of the DNA test for the establishment of the family link tends to become a standard practice rather than a last resort one.<sup>299</sup>

Throughout 2019, in cases where a subsequent separation of the family took place after their asylum application in Greece, the Greek Dublin Unit examined the case to see if the criteria of the humanitarian clause are fulfilled. However, the majority of the Member States reject such outgoing requests.<sup>300</sup> Germany, in particular, refuses those “take charge” requests within a very short period of time, providing insufficient or no reasoning at all while insisting on and prioritising the procedural rather than the substantial rules and binding criteria laid down in the Dublin Regulation (such as the family unity).<sup>301</sup> According to GCR’s experience, if a subsequent request involving self-inflicted family separation is rejected, the Dublin Unit generally refuses to send a re-examination request and closes the case.

According to GCR’s knowledge, in a considerable number of cases of ‘self-inflicted’ family separations, where children already registered with their families in Greece show themselves in another Member State, the Asylum Service continued the practice of not sending outgoing “take charge” requests based on the family provisions or the humanitarian clause, on the basis that practices of ‘self-inflicted’ family separations are against the best interest of the child.

As regards the documents requested, in case the child is in another Member State, written consent of his or her guardian is always requested by the Dublin Unit in order to start the procedure.

#### *Unaccompanied children*

Problems also arise in the cases of unaccompanied children whose family members are present in another Member State. The system of appointing a guardian for minors is dysfunctional, as little is done after the Asylum Service or Police or RIC has informed the Public Prosecutor for minors who acts by law as temporary guardian for unaccompanied children; the Prosecutor merely assumes that capacity in theory. In practice, NGO personnel is usually appointed as temporary guardian by the Public Prosecutor. The Law 4554/2018, passed in July 2018, provides a regulatory framework for the guardianship of unaccompanied minors. The State, with the support of the National Center for Social Solidarity (NCSS - EKKA), shall bear the responsibility for such minors and a Supervisory Board for the Guardianship of Unaccompanied Minors is to be established.<sup>302</sup> A Register of Professional Guardians shall also be kept at NCSS. However, this has yet to be implemented and according to the last amendment, the law should enter into force on 1 March 2020,<sup>303</sup> however the latter was still not in force at the end of May 2020.

Germany has refused to examine requests if a more distant family member/relative of an unaccompanied minor is present in Greece, even when the child is to be reunited with his/her parents or siblings, since it considers the child not to be an unaccompanied minor.<sup>304</sup>

In August 2018, the Dublin Unit developed a new tool for the Best Interests Assessment (BIA) of unaccompanied children, aiming to facilitate family reunification requests.<sup>305</sup> According to the Dublin Unit, the purpose of this tool is to gather all the necessary information required by Member States when

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<sup>299</sup> Information provided by the Dublin Unit, 31 January 2020.

<sup>300</sup> Information provided by the Asylum Service, 17 February 2020.

<sup>301</sup> Refugee Support Aegean/Pro Asyl, ‘Refugee Families Torn Apart’, September 2019, available at: <https://bit.ly/2KuDr4h>.

<sup>302</sup> Law 4554/2018, Chapter C.

<sup>303</sup> Ibid, Article 32, as amended by Law 4623/2019, Article 73.

<sup>304</sup> Information provided by the Dublin Unit, 31 January 2020.

<sup>305</sup> Asylum Service, *Best Interest Assessment Form for the Purposes of Implementing the Dublin Regulation*, available at: <https://bit.ly/2GQT8Tx>.

assessing family reunification cases or unaccompanied children. The tool was developed following consultation with all international organisations and NGOs active in Greece.<sup>306</sup>

The new BIA is indispensable for the “take charge” request of unaccompanied children and to GCR’s knowledge, its omission always leads to rejections by the Dublin Units of the other Member States. However, the submission of a fully completed BIA form does not necessarily lead to the acceptance of the outgoing “take charge” request by the other Member State. Based on GCR’s experience, some Member States also require evidence that the relative residing in the requested country is able to support the child, although this is not provided for in article 8 of the Dublin III Regulation. In this context, GCR is aware of cases where the submission of house and employment contracts was required. Moreover, Germany has rejected “take charge” requests because the professional who completed the BIA form was not authorised by the unaccompanied minor or because it required that the Public Prosecutor for Minors authorises the person who completes the BIA form. Recently some Member States, like the United Kingdom, have initiated a new practice where their social services contact directly the unaccompanied children and ask them additional questions.

Furthermore, “take charge” requests for unaccompanied minors have been rejected due to an arbitrary interpretation of the “best interest of the child” concept. In a case handled by GCR, the German Dublin Unit rejected the “take charge” request for an unaccompanied minor who wanted to reunite with his uncle, because the uncle said that the child would share a room with his cousins, though in a separate bunk bed. This was sufficient for Germany to deem that the best interest of the child would not be respected.

Such practices are indicative of the strict and wrongful application of the Dublin Regulation by other Member States which has resulted in a dramatic increase in the number of the refusals of “take charge” requests for family reunifications, sent by the Greek Dublin Unit. Namely, the German Dublin Unit rejects 75% of the requests for family reunification.<sup>307</sup> A joint report of Refugee Support Aegean and PRO ASYL published in September 2019, focuses on this issue and confirms the negative practices of the German Dublin Unit. Germany is urged to review its current application of the Dublin Regulation in order to interpret it as a whole set of criteria and substantial principles (such as the family unity and the best interest of the child) rather than just as procedural rules and deadlines.<sup>308</sup> However, it should be noted that the German Administrative Courts have adopted a different approach, overturning in many cases the rejections of the German Dublin Unit and ruling that Germany must accept the “take-charge” requests.<sup>309</sup>

### 2.1.2. The dependent persons and discretionary clauses

There has been a significant increase in outgoing requests based on the humanitarian clause. (1,496 in 2019 compared to 825 in 2018). According to GCR’s experience, requests under the humanitarian clause mainly concern dependent and vulnerable persons who fall outside the family criteria set out in Articles 8-11 and cases where the three-month deadline for a request has expired for various reasons. Moreover, some Member States, such as the United Kingdom, ask to be sent a “take charge” request based on the humanitarian clause of Article 17(2) of the Dublin III Regulation in cases where they have failed to reply within the deadline, although this omission should lead to implied acceptances.

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<sup>306</sup> Asylum Service, ‘Best Interests Assessment for Dublin UAM’s cases – A new tool to serve the needs of family reunification applications of unaccompanied minors’, 2 August 2018, available at: <https://bit.ly/2Sxi8QX>.

<sup>307</sup> ECRE, ‘Germany Rejects 75% of Greek Requests for Family Reunification’, 7 June 2019, available at: <https://bit.ly/2KtvoVe>.

<sup>308</sup> Refugee Support Aegean/Pro Asyl, ‘Refugee Families Torn Apart’, September 2019, available at: <https://bit.ly/2x6DGzu>.

<sup>309</sup> See: Administrative Court Wiesbaden (Az. 4 L 478/19.WI.A), Decision of 25 April 2019, Administrative Court Frankfurt a. M. (Az. 10 L 34/19.F.A), Decision of 27 May 2019, Administrative Court Lüneburg (Az. 8 B 111/19), Decision of 8 June 2019.

The acceptance rate has been lower on outgoing requests based on the humanitarian clause compared to requests based on the family provisions. Out of 1,496 outgoing requests under Article 17(2) of the Dublin Regulation in 2019, only 488 were accepted (32.7%).<sup>310</sup> In those cases, the Dublin Unit has been reluctant to send re-examination requests after an initial rejection. Germany generally refuses to apply Article 17(2) in order to examine overdue requests. Contrary to the interpretation of the German Dublin Unit, the German Administrative Courts have ruled in several cases that the discretionary clause of Article 17(2) might under certain circumstances oblige Germany to take charge of an applicant, particularly if the competence of the Member State would not be given because of a deadline expiry the applicant had no influence on.<sup>311</sup>

Some positive developments occurred as well. In March 2019 the Greek and Portuguese authorities concluded a bilateral agreement to relocate 1,000 asylum seekers from Greece to Portugal by the end of the year. The programme would start with a trial of 100 asylum seekers. Relocation candidates would have to initially apply for asylum in Greece and Portuguese authorities would then interview eligible asylum seekers in Greece to determine if they could be relocated to Portugal. Selection criteria were not known.<sup>312</sup> However, no further developments on this matter have been recorded throughout the year. In January 2020, the Alternate Minister for Migration Policy reiterated Portugal's will to accept up to 1,000 asylum seekers and stated that Greece and Portugal have already been working on this project.<sup>313</sup>

A new project for the relocation of 400 vulnerable asylum seekers to France has also been announced. The project should start in February 2020, aiming at the completion of the relocations by the summer.<sup>314</sup>

Moreover, in December 2019 the Greek and Serbian authorities reached an agreement for the relocation of 100 unaccompanied minors to Serbia. The selection process will be managed by the National Center for Social Solidarity and both the UNHCR and IOM will be involved in the implementation of the agreement.<sup>315</sup>

In March 2020, a number of EU Member States have accepted to relocate a number of 1,600 unaccompanied children from Greece.<sup>316</sup> The first 12 children, have been relocated to Luxembourg on 15 April 2020. 47 children have been relocated to Germany on 18 April 2020. Portugal also announced in May 2020 that it would relocate 500 unaccompanied children. Despite the fact that the number of children to be relocated remains low, compared to the number of unaccompanied children present in Greece (5,379 children as of 29 February 2020), this relocation scheme could be an important precedent. UNHCR, IOM and UNICEF, in a joint statement have urged "other EU Member States to also follow through on relocation pledges". As underlined, "[t]he relocation efforts are humane, concrete demonstrations of European solidarity... there is a need to move beyond one-off relocation exercises and establish more predictable arrangements for relocation within the EU, for longer-term impact".<sup>317</sup>

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<sup>310</sup> Information provided by the Asylum Service, 17 February 2020.

<sup>311</sup> Administrative Court Berlin, (23 L 706.18 A), 15 March 2019.

<sup>312</sup> Blog.refugee.info, 'Portugal will accept up to 1,000 asylum-seekers from Greece', 19 March 2019, available at: <https://bit.ly/2CEyYII>.

<sup>313</sup> Avgi, 'Relocation of 400 asylum-seekers to France' 21 January 2020, available at: <https://bit.ly/3bBqHVm>.

<sup>314</sup> Ibid.

<sup>315</sup> News 247, 'Relocation of unaccompanied minor migrants to Serbia is promoted', 15 January 2020, available at: <https://bit.ly/2yyFNfR>.

<sup>316</sup> EU Commissioner for Home Affairs, Intervention (via video conference) in European Parliament LIBE Committee on the situation at the Union's external borders in Greece, 2 April 2020, available at: <https://bit.ly/3adzSKI>.

<sup>317</sup> UNHCR, IOM, UNICEF, UN agencies welcome first relocation of unaccompanied children from Greece, 12 April 2020, available at: <https://bit.ly/3bdV6cb>.

## 2.2. Procedure

### Indicators: Dublin: Procedure

1. Is the Dublin procedure applied by the authority responsible for examining asylum applications?  
 Yes  No
2. On average, how long does a transfer take after the responsible Member State has accepted responsibility?  
Not available

The Dublin procedure is handled by the Dublin Unit of the Asylum Service in Athens. Regional Asylum Offices are competent for registering applications and thus potential Dublin cases, as well as for notifying applicants of decisions after the determination of the responsible Member State has been carried out.

As already mentioned in Determining authority and Regular Procedure, EASO also assists the authorities in the Dublin procedure. However, EASO is involved only in the outgoing procedure, due to a decision not to assist in the handling of incoming requests to avoid dealing with cases where requests had to be refused due to limitations in the reception system, or due to policies contrary to the EU asylum acquis.<sup>318</sup>

In line with Article 21 of the Dublin III Regulation, where an asylum application has been lodged in Greece and the authorities consider that another Member State is responsible for examining the application, Greece must issue a request for that Member State to take charge of the applicant no later than three months after the lodging of the application. However, as noted in [Dublin: General](#), following a change of practice on the part of the German Dublin Unit following the CJEU's ruling in *Mengesteab*, the Greek Dublin Unit strives to send "take charge" requests within three months of the expression of the will to seek international protection, rather than of the lodging of the claim by the Asylum Service.

Similarly, requests for family reunification based however on the "humanitarian" clause due to the expiry of the three-month deadline due to the applicant's responsibility are usually rejected on the basis that "Article 17(2) has not the intention to examine take charge requests which are expired", according to the rejecting Member State.

Given the severe restrictions posed by other Member States on family reunification, as they were described in [Dublin: General](#), the Unit consistently prepares for a rejection, and anticipates re-examination requests.<sup>319</sup>

Generally, outgoing requests by Greece receive a reply within 2 months after the request is submitted, in line with the time limits imposed by the Regulation.<sup>320</sup> No data have been made available by the Asylum Service regarding the overall average duration of the procedure between the lodging of the application and the actual transfer to the responsible Member State.

### 2.2.1. Individualised guarantees

The Greek Dublin Unit requests individual guarantees on the reception conditions of the applicant and the asylum procedure to be followed.<sup>321</sup> In any event, in family reunification cases, the applicant is willing to be transferred there and additionally he or she relinquishes his or her right to appeal against the decision rejecting the asylum application as inadmissible.

<sup>318</sup> ECRE, *The Role of EASO Operations in national asylum systems*, November 2019, available at: <https://bit.ly/36qWCWH>, 9.

<sup>319</sup> ECRE, *'The Role of EASO Operations in National Asylum Systems'*, 29 November 2019, available at: <https://bit.ly/2x2uzzN>.

<sup>320</sup> Article 22(1) Dublin III Regulation.

<sup>321</sup> Information provided by the Dublin Unit, 31 January 2020.

## 2.2.2. Transfers

Dublin procedures appear to run smoothly, but usually making use of the maximum time of the requisite deadlines, although extremely vulnerable cases are reportedly treated with a certain priority. Generally, deadlines for “take charge” requests as well as transfers are usually met without jeopardising the outcome of family reunification. However, delays occur and the waiting time for transfers remains high. No data have been made available by the Asylum Service regarding the average duration of the transfer procedure, after a Member State had accepted responsibility.

Applicants who have to travel by plane to another Member State are requested to be several hours in advance at the **Athens International Airport**. The police officer escorts the applicants to the check-in counter. Once the boarding passes are issued, the escorting officer hands in the boarding passes, the *laissez-passer* and the applicant’s “asylum seeker’s card” to a police officer at the airport. The latter escorts the applicant into the aircraft, hands in the required documents to the captain of the aircraft and the applicant boards the aircraft.

Travel costs for transfers were covered by the Asylum Service in 2019.

A total of 2,542 transfers were completed in 2019, compared to 5,460 transfers in the previous year. This significant decrease relates to the fact that a considerable number transfers of applicants to Germany which had been delayed for many months in 2017, were carried out in 2018.

Outgoing Dublin transfers by month: 2019												
Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
72	223	309	96	225	198	175	97	318	232	412	185	<b>2,542</b>

Source: Asylum Service.

## 2.3. Personal interview

### Indicators: Dublin: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the Dublin procedure?  Yes  No

❖ If so, are interpreters available in practice, for interviews?  Yes  No

2. Are interviews conducted through video conferencing?

Frequently  Rarely  Never

Under the Dublin procedure, a personal interview is not always required.<sup>322</sup>

In practice, detailed personal interviews on the merits do not usually take place, when outgoing requests are pending for the transfer of asylum seekers under the family reunification procedure, although questions mostly relating to the Dublin procedure are almost always addressed to the applicant in an interview framework. The applicant identifies the family member with whom he or she desires to reunite and provides all the relevant documentation.

Questions relating to the Dublin procedure (e.g. on the presence of other family members in other Member States) are always addressed to the applicant during the [Regular Procedure: Personal Interview](#)

<sup>322</sup> Article 5 Dublin III Regulation.

examining his or her asylum claim. According to GCR's experience, applicants who at this later stage, well after the three-month deadline, express their will to be reunited with a close family member in another EU Member State, are given the chance to apply for family reunification. In several cases handled by GCR, the Dublin Unit strives to send the outgoing request as soon as possible, after the written consent and all necessary documents have been submitted.

Interviews in non-family reunification cases tend to be more detailed when it is ascertained that an asylum seeker, after being fingerprinted, has already applied for asylum in another EU Member State before Greece.

## 2.4. Appeal

### Indicators: Dublin: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the Dublin procedure?

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No  |
| ❖ If yes, is it                         | <input type="checkbox"/> Judicial <input checked="" type="checkbox"/> Administrative |
| ❖ If yes, is it suspensive              | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No                  |

According to the IPA, applications for international protection are declared inadmissible where the Dublin Regulation applies.<sup>323</sup> An applicant can lodge an appeal against a first instance decision rejecting an application as inadmissible due to the application of the Dublin Regulation within 15 days.<sup>324</sup> Such an appeal can also be directed against the transfer decision, which is incorporated in the inadmissibility decision.<sup>325</sup>

Contrary to other appeals against inadmissibility decisions, the appeal will have automatic suspensive effect.<sup>326</sup> Appeals against Dublin decisions will be examined by the Appeals Committees in single-judge format.<sup>327</sup>

## 2.5. Legal assistance

### Indicators: Dublin: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?

- |                                     |  |  |
|-------------------------------------|--|--|
| <input type="checkbox"/> Yes        | <input type="checkbox"/> With difficulty             | <input checked="" type="checkbox"/> No |
| ❖ Does free legal assistance cover: | <input type="checkbox"/> Representation in interview |  |
|                                     | <input type="checkbox"/> Legal advice                |  |

2. Do asylum seekers have access to free legal assistance on appeal against a Dublin decision in practice?

- |                                    |   |                             |
|------------------------------------|---|-----------------------------|
| <input type="checkbox"/> Yes       | <input checked="" type="checkbox"/> With difficulty | <input type="checkbox"/> No |
| ❖ Does free legal assistance cover | <input type="checkbox"/> Representation in courts   |                             |
|                                    | <input checked="" type="checkbox"/> Legal advice    |                             |

Access to free legal assistance and representation in the context of a Dublin procedure is available under the same conditions and limitations described in [Regular Procedure: Legal Assistance](#). No state funded

<sup>323</sup> Article 84(1)(b) and Article 92(1)(b) IPA.

<sup>324</sup> Article 84(1)(b) and Article 92(1)(b) IPA.

<sup>325</sup> *Ibid.*

<sup>326</sup> Article 104(1) and (2)(a) IPA

<sup>327</sup> Article 116(2) IPA.



free legal aid is provided in first instance, including Dublin cases. The same problems and obstacles described in the regular procedure exist in the context of the Dublin procedure, with NGOs trying in practice to cover this field as well.

Limited access to legal assistance creates difficulties for applicants in navigating the complexities of the Dublin procedure. The case files of the applicants are communicated by the RAO competent for the registration of asylum applications to the Dublin Unit. Moreover, the Dublin Unit does not consider itself responsible for preparing Dublin-related case files, as the applicants bear the responsibility of submitting to the Asylum Service all documents required in order for the Dublin Unit to establish a “take charge” request, such as proof of family links. However, in practice, according to GCR’s experience, Dublin Unit officers usually make every effort to notify applicants on time for the submission of any missing documents before the expiry of the deadlines.

## 2.6. Suspension of transfers

### Indicators: Dublin: Suspension of Transfers

1. Are Dublin transfers systematically suspended as a matter of policy or jurisprudence to one or more countries?  Yes  No  
❖ If yes, to which country or countries?

Little information on suspension of transfers is available.

The Administrative Court of Appeal of **Piraeus** suspended the execution of a decision of the 5<sup>th</sup> Independent Appeals Committee regarding the transfer of an Afghan family of asylum-seekers, with young children, to **Bulgaria** in May 2019, finding that, if returned to Bulgaria, they seem to have a justified claim of potential harm by being sent back to Afghanistan (refoulement).<sup>328</sup>

Moreover, in December 2019, the Administrative Court of Athens suspended the transfer of a vulnerable asylum-seeker from Ivory Coast, who was victim of torture, to **Bulgaria**, finding that it is likely that the applicant may suffer an irreversible harm in his health and life, as well as an infringement of his rights, if returned to Bulgaria, due to systematic omissions and deficiencies of this country in the examination of applications for international protection from vulnerable persons.<sup>329</sup>

## 2.7. The situation of Dublin returnees

Transfers of asylum seekers from another Member State to Greece under the Dublin Regulation had been suspended since 2011, following the *M.S.S. v. Belgium & Greece* ruling of the ECtHR and the Joined Cases C-411/10 and C-493/10 *N.S. v. Secretary of State for the Home Department* ruling of the CJEU.<sup>330</sup>

Following three Recommendations issued to Greece in the course of 2016,<sup>331</sup> and despite the fact that the Greek asylum and reception system remained under significant pressure, *inter alia* due to the closure of the so-called Balkan corridor and the launch of the EU-Turkey Statement, the European Commission issued a Fourth Recommendation on 8 December 2016 in favour of the resumption of Dublin returns to Greece, starting from 15 March 2017, without retroactive effect and only regarding asylum applicants who

<sup>328</sup> Administrative Court of Appeals of Piraeus, Decision N69/2019, 15 May 2019.

<sup>329</sup> Administrative Court of Appeals of Athens, Decision N412/2019, 16 December 2019.

<sup>330</sup> ECtHR, *M.S.S. v. Belgium and Greece*, Application No. 30696/09, Judgment of 21 January 2011; CJEU, Joined Cases C-411/10 and C-493/10 *N.S. v. Secretary of State for the Home Department*, Judgment of 21 December 2011.

<sup>331</sup> Commission Recommendation of 10 February 2016, C(2016) 871; Commission Recommendation of 15 June 2016, C(2016) 2805; Commission Recommendation of 28 September 2016, C(2016) 6311.

have entered Greece from 15 March 2017 onwards or for whom Greece is responsible from 15 March 2017 onwards under other Dublin criteria.<sup>332</sup> Persons belonging to vulnerable groups such as unaccompanied children are to be excluded from Dublin transfers for the moment, according to the Recommendation.<sup>333</sup>

The National Commission for Human Rights in a Statement of 19 December 2016, expressed its “grave concern” with regard to the Commission Recommendation and noted that “it should be recalled that all refugee reception and protection mechanisms in Greece are undergoing tremendous pressure... the GNCHR reiterates its established positions, insisting that the only possible and effective solution is the immediate modification of the EU migration policy and in particular of the Dublin system, which was proven to be inconsistent with the current needs and incompatible with the effective protection of human rights as well as the principles of solidarity and burden-sharing among the EU Member-States.”<sup>334</sup>

These findings remain valid at the time of writing, since Greece continues to receive a considerably high number of asylum applications,<sup>335</sup> while competent authorities do not have the capacity to process the examination of the applications in due time (see [Regular Procedure: General](#)). In addition, reception capacity still fall short of actual needs and asylum seekers and status holders face homelessness and destitution risks, while living conditions are reported substandard in a number of facilities across the country (see [Reception Conditions: Conditions in Reception Facilities](#) and [Content of Protection: Housing](#)).

During 2018, the number of incoming requests under the Dublin Regulation received by the Greek Dublin Unit was 9,219. This number continued to increase in 2019, with Greece receiving 12,718 incoming requests, coming predominantly from Germany (8,874). Of those, only 710 were accepted (5.6%) while 12,008 were refused (94.4%).

Incoming Dublin requests by sending country: 2019			
Country	Total requests	Accepted requests	Refused requests
Germany	8,874	504	8,370
Sweden	935	70	865
Belgium	926	38	888
Italy	468	9	459
Slovenia	381	3	378
<b>Total</b>	<b>12,718</b>	<b>710</b>	<b>12,008</b>

Source: Asylum Service.

<sup>332</sup> Commission Recommendation of 8 December 2016 addressed to the Member States on the resumption of transfers to Greece under Regulation (EU) No. 604/2013, C(2016) 8525. For a critique, see Doctors of the World Greece, ‘Επανάραξη των επιστροφών «Δουβλίνου»’, 14 December 2016, available in Greek at: <http://bit.ly/2gHDKMJ>; Amnesty International, ‘EU pressure on Greece for Dublin returns is “hypocritical”’, 8 December 2016, available at: <http://bit.ly/2kG8Dzf>; Human Rights Watch, ‘EU: Returns to Greece Put Refugees at Risk’, 10 December 2016, available at: <http://bit.ly/2hgVaNi>; ECRE, GCR, Aitima and SolidarityNow, *Letter to the President of the European Commission and the Greek Minister of Migration Policy “Re: Joint Action Plan on EU-Turkey Statement and resumption of Dublin transfers to Greece”*, 15 December 2016, available at: <http://bit.ly/2kGcc8P>; National Commission for Human Rights, ‘Statement in response to the recommendation of the European Commission to reactivate the refugee return mechanism under the Dublin system’, 19 December 2016, available at: <http://bit.ly/2kGi7us>.

<sup>333</sup> Commission Recommendation C(2016) 8525, para 9.

<sup>334</sup> National Commission for Human Rights, ‘Statement in response to the recommendation of the European Commission to reactivate the refugee return mechanism under the Dublin system’, 19 December 2016, available at: <http://bit.ly/2kGi7us>.

<sup>335</sup> Asylum Service, *Statistical Data of the Greek Asylum Service (07.06.2013-31.12.2019)*, available at: <https://bit.ly/3cHuiNs>.

In 2019, 33 persons have been transferred back to Greece, mainly from Germany, Belgium and Poland.<sup>336</sup>

Regarding the guarantees provided by Greece to the Member states requesting the return of a person to Greece, the Greek Dublin Unit informs the Member State on the availability of accommodation in any reception facility and on the resumption of the asylum procedure, following the announcement of the person's return.<sup>337</sup> Upon arrival at the **Athens International Airport**, the person is received by the Police and referred to the Asylum Service.

In practice and during 2019, if the application of the person concerned has not been closed, i.e. the deadline of 9 months from the discontinuation of the procedure has not expired, the person could submit an application for the continuation of the examination and continue the previous procedure upon return to Greece. Otherwise, the person has to file a Subsequent Application, contrary to Article 18(2) of the Dublin Regulation.

Finally, it should be mentioned that, applicants who are subject to the EU-Turkey statement and left the islands in violation of the geographical limitation to remain on this island imposed, upon return in Greece from another Member State within the framework of the Dublin Regulation, will be returned to said island, in virtue of a 2016 police circular,<sup>338</sup> and their application will be examined under the fast track border procedure, which offers limited guarantees.<sup>339</sup>

In 2019, a number of Member States' Courts have ruled against the transfer of asylum applicants to Greece on the basis of the Dublin III regulation.

In October 2019, the Dutch Council State ruled against the Dublin transfer of an applicant to Greece.<sup>340</sup> It held that returns to Greece cannot take place unless legal aid can be guaranteed to asylum seekers, or unless there are individual guarantees that asylum seekers will be appointed legal representation upon return.

In July 2019, the Administrative Court of Munich suspended the transfer of a Syrian national to Greece. His application for asylum in Greece had previously been deemed inadmissible as Turkey was considered as a safe third country. The Court found that, if returned to Greece, the applicant could face chain refoulement to Turkey. Moreover, it held that the Greece-Germany Administrative Arrangement did not apply in this case, as the applicant was refused entry due to lack of correct documentation. Finally, Germany had launched the transfer proceedings too soon and not in accordance with the Dublin Regulation.<sup>341</sup>

### **Greece-Germany Administrative Arrangement**

In August 2018, Germany and Greece concluded the so-called "Administrative Arrangement" Agreement between the Ministry of Migration Policy of the Hellenic Republic and the Federal Ministry of the Interior,

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<sup>336</sup> Asylum Service, *Statistical Data of the Greek Dublin Unit (07.06.2013 - 31.12.2019)*, available at: <https://bit.ly/3byP2uO>.

<sup>337</sup> Information provided by the Asylum Service, 17 February 2020.

<sup>338</sup> Police Circular No 1604/16/1195968, available at: <https://bit.ly/3dVQ05t>.

<sup>339</sup> See to this regard: RSA/PRO ASYLI, *Legal Status and Living Conditions of a Syrian asylum-seeker upon his return to Greece under the Dublin Regulation*, December 2019, available at: <https://bit.ly/3fMEfzH>.

<sup>340</sup> Dutch Council of State, Decision 3537/2019, 23 October 2019; EDAL, The Netherlands: Assurances of access to legal aid required in transfers to Greece Date: Wednesday, 23 October 2019, available at: <https://bit.ly/2z5yoou>.

<sup>341</sup> Munich Administrative Court, Decision of 17 July 2019, M 11 S 19.50722, M 11 S 19.50759; Equal Rights Beyond Borders, Court of Munich again: Turkey is not a safe third country - Is the EU Turkey Deal dead?, 16 August 2019, available at: <https://bit.ly/34HBHh6>.

Building and Community of the Federal Republic of Germany on the cooperation when refusing entry to persons seeking protection in the context of temporary checks at the internal German-Austrian border” (the so-called ‘Seehofer Deal’). This ‘agreement’ did not take the form of an official bilateral agreement or treaty. The text of the arrangement was annexed to letters exchanged between German and Greek authorities,<sup>342</sup> and has not been officially published, though it has been leaked.<sup>343</sup>

The Administrative Arrangement lays down a fast-track procedure for the return to Greece of persons apprehended during border controls on the German-Austrian border, which circumvents the procedure and legal safeguards set *inter alia* by Dublin III Regulation. It “is essentially a fast track implementation of return procedures in cases for which Dublin Regulation already lays down specific rules and procedures. The procedures provided in the ‘Arrangement’ skip all legal safeguards and guarantees of European Legislation”.<sup>344</sup>

According to the “Administrative Arrangement”, persons who: (a) are arrested at the German-Austrian border; (b) who express their desire for international protection in Germany; and (c) have been fingerprinted in Eurodac as applicants for international protection in Greece from July 2017 onwards, are issued a refusal of entry decision and are automatically returned to Greece. The return of the person should be initiated no more than 48 hours from apprehension. Greece can object to the return within 6 hours from the automatic confirmation of the notification. Germany notifies the refusal of entry to the Greek Authorities. A mechanism for the automatic confirmation of the receipt of the notification is introduced from the Greek side.

A number of legal, including human rights, concerns are raised by said arrangement. These can be summarised as follows:<sup>345</sup>

- Despite the explicit intention of the person to apply for asylum in Germany, the application is not registered by the German authorities, in violation of the recast Asylum Procedures Directive among other instruments,
- Procedural safeguards prior to transfer are not followed and any safeguards set out namely in the Dublin III Regulation are bypassed. Human rights obligations under Article 3 ECHR and Article 4 of the EU Charter, imposing on the returning state a duty to ensure guarantees against *refoulement* and with regard to the living conditions of the applicant, are also not met.<sup>346</sup> European Commission guidance on the need to obtain individual guarantees prior to transfers to Greece is also disregarded.<sup>347</sup>
- Access to asylum of those returned to Greece is not guaranteed.

The implementation of the transfer to Greece within a very short timeframe, coupled with the non-suspensive nature of appeals against refusal of entry decisions, also hinders access to an effective remedy.<sup>348</sup>

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<sup>342</sup> In.gr, ‘Βίτσας: Τι προβλέπει η διμερής συμφωνία Ελλάδας – Γερμανίας’, 17 August 2018, available in Greek at: <https://bit.ly/2HCtIJK>.

<sup>343</sup> Refugee Support Aegean, ‘The Administrative Arrangement between Greece and Germany’, 1 November 2018, available at: <https://bit.ly/2WcOymT>.

<sup>344</sup> *Ibid.*

<sup>345</sup> For an analysis see ECRE, *Bilateral agreements: Implementing or bypassing the Dublin Regulation?*, December 2018, available at: <https://bit.ly/2rvGNur>; Refugee Support Aegean, ‘The Administrative Arrangement between Greece and Germany’, 1 November 2018, available at: <https://bit.ly/2WcOymT>.

<sup>346</sup> See e.g. ECtHR, *M.S.S. v. Belgium and Greece*; CJEU, Joined Cases C-411/10 *NS* and C-493/10 *ME*, Judgment of 21 December 2011. For an overview of relevant case law, see UNHCR, *Manual on the Case Law of the European Regional Courts*, June 2015, available at: <https://bit.ly/2WyQ8z3>.

<sup>347</sup> Point 10 Commission Recommendation of 8 December 2016 addressed to the Member States on the resumption of transfers to Greece under Regulation (EU) No. 604/2013, C(2016) 8525.

<sup>348</sup> See e.g. AIDA, *Access to protection in Europe: Borders and entry into the territory*, October 2018, available at: <https://bit.ly/2CLSIMg>, 9.

As of early October 2019, the German-Greek Administrative Arrangement had been implemented in nineteen cases. The persons returned from Germany under the arrangement include 9 Afghan nationals, 3 Iraqi nationals, 3 Syrian nationals, 2 Cameroonian, 1 Iraqi and 1 Iranian national.<sup>349</sup>

Three lawsuits against the Federal Police Directorate of Munich are pending before the Administrative Court of Munich in connection with the Administrative Arrangement. Two of these cases included applications for interim measures.

In May 2019, the Administrative Court of Munich ruled against a provisional return of an applicant from Greece to Germany. The applicant had been refused entry to Germany and had already been returned to Greece. The Court refused to grant interim measures and held that Greece was responsible for the examination of the asylum application. Moreover, the applicant would not specifically and individually be affected by systemic weaknesses in Greece.<sup>350</sup>

In August 2019, the Administrative Court of Munich shifted its approach and ruled that the German-Greek Administrative Arrangement violates European law, circumventing the overall objective of the Dublin Regulation.<sup>351</sup> The case concerned an applicant who had previously been returned to Greece on the same day of his apprehension at the German-Austrian border. The Court granted interim measures and ordered his return to Germany. It is the first decision ruling against the Administrative Arrangement, one year after its conclusion. As reported, German authorities have not complied with said Decision, up until 2 September 2019.<sup>352</sup>

A case, supported by GCR is pending before the European Court of Human Rights, by the time of writing.

### 3. Admissibility procedure

#### 3.1 General (scope, criteria, time limits)

Under Article 84 IPA<sup>353</sup>, an application can be considered as inadmissible on the following grounds:

1. Another EU Member State has granted international protection status
2. Another EU Member State has accepted responsibility under the Dublin Regulation;
3. The applicant comes from a **First Country of Asylum**;
4. The applicant comes from a **Safe Third Country**;
5. The application is a **Subsequent Application** and no “new essential elements” have been presented;
6. A family member has submitted a separate application to the family application without justification for lodging a separate claim.

The Asylum Service must decide on the admissibility of an application within 30 days.<sup>354</sup>

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<sup>349</sup> For more details, see German Federal Government, Reply to parliamentary question by Die Linke, 19/8340, 9 October 2019, available in German .

<sup>350</sup> Munich Administrative Court, Decision of 09.05.2019, M 5 E 19.50027.

<sup>351</sup> Munich Administrative Court, Decision of 9 August 2019, M 18 E 19.32238; EDAL, Germany: Administrative Court of Munich finds German-Greek Administrative Agreement violates European law and orders return of applicant from Greece, 8 August 2020, available at: <https://bit.ly/34HxGtq>.

<sup>352</sup> RSA/PROASYL *et al.*, ‘Less than 48h for an illegal deportation, but still no return ordered three weeks after court decision’, 2 September 2019, available at: <https://bit.ly/3epOSrv>.

<sup>353</sup> Prior to the reform Article 54 L 4375/2016 was applicable, according to which an application can be considered as inadmissible on the following grounds: Another EU Member State has granted international protection status or has accepted responsibility under the Dublin Regulation; The applicant comes from a “safe third country” or a “first country of asylum”; The application is a subsequent application and no “new essential elements” have been presented; A family member has submitted a separate application to the family application without justification for lodging a separate claim.

<sup>354</sup> Article 83(2) IPA.

The Asylum Service dismissed **4,419** applications as inadmissible in 2019:

Inadmissibility decisions: 2019	
Type of decision	Number
Safe third country	240
Dublin cases	2,755
Subsequent application	1,422
Formal reasons	2
<b>Total</b>	<b>4,419</b>

Source: Asylum Service, <https://bit.ly/3br6C33>.

### 3.2 Personal interview

#### Indicators: Admissibility Procedure: Personal Interview

Same as regular procedure

- Is a personal interview of the asylum seeker in most cases conducted in practice in the admissibility procedure?  Yes  No
  - ❖ If so, are questions limited to nationality, identity, travel route? Depends on grounds
  - ❖ If so, are interpreters available in practice, for interviews?  Yes  No
- Are interviews conducted through video conferencing?  Frequently  Rarely  Never

The conduct of an interview on the admissibility procedure varies depending on the admissibility ground examined. For example, according to Article 89(2) IPA, in force since 1 January 2020 as a rule no interview takes place during the preliminary examination of a subsequent application.<sup>355</sup> In Dublin cases, an interview limited to questions on the travel route, the family members' whereabouts etc. takes place (see section on Dublin). Personal interviews in cases examined under the "safe third country" concepts focus on the circumstances that the applicant faced in Turkey.

From 1 January 2020 onwards, it is possible for the admissibility interview to be carried out by personnel of EASO or, in particularly urgent circumstances, trained personnel of the Hellenic Police or the Armed Forces.<sup>356</sup> Such personnel is not allowed to wear military or law enforcement uniforms during interviews.<sup>357</sup>

### 3.3 Appeal

#### Indicators: Admissibility Procedure: Appeal

Same as regular procedure

- Does the law provide for an appeal against an inadmissibility decision?
  - Yes  No
  - ❖ If yes, is it  Judicial  Administrative
  - ❖ If yes, is it suspensive  Yes  Some grounds  No

<sup>355</sup> According to the second limb of Article 59(2), "Exceptionally, the applicant may be invited, according to the provisions of this Part, to a hearing in order to clarify elements of the subsequent application, when the Determining Authority considers this necessary".

<sup>356</sup> Article 77(1) IPA.

<sup>357</sup> Article 77(12)(c) IPA.

Under the previous L. 4375/2016, an appeal against a first instance decision of inadmissibility could be lodged within 15 days, instead of 30 in the regular procedure. Under the border procedure the appeal could be lodged within 5 days.<sup>358</sup> The appeal had an automatic suspensive effect.

The 2019 reform has made significant changes to the rules governing appeals against inadmissibility decisions. According to the IPA, the deadlines for appealing an inadmissibility decision, the automatic suspensive effect of appeals and the format of the Committee examining them depend on the inadmissibility ground invoked in the first instance decision:<sup>359</sup>

Time limits and automatic suspensive effect: Appeals against inadmissibility			
Ground	Deadline (days)	Suspensive	Format
Protection in another EU Member State	20	x	Single judge
Dublin	15	√	Single judge
First country of asylum	20	x	Collegial
Safe third country	20	√	Collegial
Subsequent application with no new elements	5	x	Single judge
Application by dependant	20	√	Single judge

The Appeals Committee must decide on the appeal within 30 days,<sup>360</sup> as opposed to 3 months in the regular procedure.

### 3.4 Legal assistance

**Indicators: Admissibility Procedure: Legal Assistance**

Same as regular procedure

- Do asylum seekers have access to free legal assistance during admissibility procedures in practice?
  - Yes       With difficulty       No
  - ❖ Does free legal assistance cover:
    - Representation in interview
    - Legal advice
- Do asylum seekers have access to free legal assistance on appeal against an inadmissibility decision in practice?
  - Yes       With difficulty       No
  - ❖ Does free legal assistance cover
    - Representation in courts
    - Legal advice

Legal Assistance in the admissibility procedure does not differ from the one granted for the regular procedure (see section on [Regular Procedure: Legal Assistance](#)).

<sup>358</sup> Article 61(1) L 4375/2016

<sup>359</sup> Articles 92(1)(b) and (d) and 104(2)(a) IPA; Article 5(7)(c) L 4375/2016, as amended by Article 116(2) IPA.

<sup>360</sup> Article 101(1)(d) IPA.

## 4. Border procedure (airport and port transit zones)

### 4.1. General (scope, time limits)

#### Indicators: Border Procedure: General

1. Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities?  Yes  No
2. Can an application made at the border be examined in substance during a border procedure?  Yes  No
3. Is there a maximum time limit for a first instance decision laid down in the law?  Yes  No  
❖ If yes, what is the maximum time limit? 28 days

The previous Article 60 L.4375/2016 established two different types of border procedures. The first will be cited here as “normal border procedure” and the second as “fast-track border procedure”. In the second case, many of the rights of asylum seekers are severely restricted, as it will be explained in the section on [Fast-Track Border Procedure](#). This distinction between the “normal border procedure” and the “fast-track border procedure” are still applicable following the entry into force of the IPA on 1 January 2020. However, the IPA has amended several aspects of the border procedure.

More particularly, Article 90 IPA establishes the border procedure, limiting its applicability to admissibility or to the substance of claims processed under an accelerated procedure, whereas under the terms of Article 60(1) L 4375/2016, the merits of any asylum application could be examined at the border.<sup>361</sup>

In the “normal border procedure”, where applications for international protection are submitted in transit zones of ports or airports, asylum seekers enjoy the same rights and guarantees with those whose applications are lodged in the mainland.<sup>362</sup> However, deadlines are shorter: asylum seekers have no more than 3 days for interview preparation and consultation of a legal or other counsellor to assist them during the procedure and, when an appeal is lodged, its examination can be carried out at the earliest 5 days after its submission.

According to Article 66 IPA, the Asylum Service, in cooperation with the authorities operating in detention facilities and at Greek border entry points and/or civil society organisations, shall ensure the provision of information on the possibility to submit an application for international protection. Interpretation services shall also be provided to the extent that this is necessary for the facilitation of access to the asylum procedure. Organisations and persons providing advice and counselling, shall have effective access, unless there are reasons related to national security, or public order or reasons that are determined by the administrative management of the crossing point concerned and impose the limitation of such access. Such limitations must not result in access being rendered impossible.

Where no decision is taken within 28 days, asylum seekers are allowed entry into the Greek territory for their application to be examined according to the provisions concerning the [Regular Procedure](#).<sup>363</sup> During this 28-day period, applicants remain *de facto* in detention (see [Grounds for Detention](#)).

In practice, the abovementioned procedure is only applied in airport transit zones. In particular to people arriving at **Athens International Airport** – usually through a transit flight – who do not have a valid entry authorisation and apply for asylum at the airport.

<sup>361</sup> Article 90(1) IPA, citing Article 83(9) IPA.

<sup>362</sup> Articles 47,69, 71 and 75 IPA

<sup>363</sup> Article 60(2) L.4375/2016 and Art. 90(2) IPA.



With a Police Circular of 18 June 2016 communicated to all police authorities, instructions were provided *inter alia* as to the procedure to be followed when a third-country national remaining in a detention centre or a RIC wishes to apply for international protection, which includes persons subject to border procedure.<sup>364</sup>

The number of asylum applications subject to the border procedure at the airport in 2019 is not available.

## 4.2. Personal interview

### Indicators: Border Procedure: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the border procedure?  Yes  No
  - ❖ If so, are questions limited to nationality, identity, travel route?  Yes  No
  - ❖ If so, are interpreters available in practice, for interviews?  Yes  No
2. Are interviews conducted through video conferencing?  Frequently  Rarely  Never

The personal interview at the border is conducted according to the same rules described under the regular procedure.

In practice, in cases known to GCR, where the application has been submitted in the **Athens International Airport** transit zone, the asylum seeker is transferred to the RAO of **Attica** or the AAU of **Amygdaleza** for the interview to take place. Consequently, no interview through video conferencing in the transit zones has come to the attention of GCR up until now.

## 4.3. Appeal

### Indicators: Border Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the border procedure?
  - Yes  No
  - Judicial  Administrative
  - ❖ If yes, is it  Yes  No
  - ❖ If yes, is it suspensive  Yes  No

The IPA foresees that the deadline for submitting an appeal against a first instance negative decision is 7 days,<sup>365</sup> compared to 5 days under the previous Article.61(1)(d) of L.4375/2016. While the latter foresaw an automatic suspensive effect for all appeals under the border procedure, this is no longer the case under the IPA. The automatic suspensive effect of appeals depends on the type of negative decision challenged by the applicant (see [Admissibility Procedure: Appeal](#) and [Accelerated Procedure: Appeal](#)). For the case of applications examined under the border procedure, the derogation from automatic suspensive effect of appeals is applicable under the condition that the individual benefits from the necessary assistance of an interpreter, legal assistance and at least one week to prepare the appeal before the Appeals Committee.<sup>366</sup>

In case where the appeal is rejected, the applicant has the right to file an application for annulment before the Administrative Court (see [Regular Procedure: Appeal](#)).

<sup>364</sup> Police Circular No 1604/16/1195968/18-6-2016, available in Greek at: <http://bit.ly/2ngIEj6>.

<sup>365</sup> Article 92(1)(c) IPA.

<sup>366</sup> Article 104(3) IPA.

#### 4.4. Legal assistance

##### Indicators: Border Procedure: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?  
 Yes  With difficulty  No  
❖ Does free legal assistance cover:  Representation in interview  
 Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?  
 Yes  With difficulty  No  
❖ Does free legal assistance cover  Representation in courts  
 Legal advice

The law does not contain special provisions regarding free legal assistance in the border procedure. The general provisions and practical limitations regarding legal aid are also applicable here (see section on [Regular Procedure: Legal Assistance](#)).

#### 5. Fast-track border procedure (Eastern Aegean islands)

##### 5.1. General (scope, time limits)

##### Indicators: Fast-Track Border Procedure: General

1. Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities?  
 Yes  No
2. Can an application made at the border be examined in substance during a border procedure?  
 Yes  No
3. Is there a maximum time limit for a first instance decision laid down in the law?  
 Yes  No  
❖ If yes, what is the maximum time limit? 7 days

##### 5.1.1. The fast-track border procedure until the end of 2019 under Article 60(4) L 4375/2016

Although the fast-track border procedure was initially introduced as an exceptional and temporary procedure, it has become the rule for a significant number of applications lodged in Greece. In 2019, the total number of applications lodged before the RAO of **Lesvos, Samos, Chios, Leros** and **Rhodes** and the AAU of Kos was 39,505.<sup>367</sup> This represented 51.1% of the total number of applications lodged in Greece that year.

The previous Article 60(4) L 4375/2016 provided for a special border procedure, known as a “fast-track” border procedure, visibly connected to the implementation of the EU-Turkey Statement. In particular, the fast-track border procedure as initially foreseen by Article 60(4) L 4375/2016, voted some days after the launch of the EU-Turkey statement, provided an extremely truncated asylum procedure with fewer guarantees.<sup>368</sup>

<sup>367</sup> Information provided by the Asylum Service, 17 February 2020.

<sup>368</sup> GCR, *Παρατηρήσεις επί του νόμου 4375/2016*, 8 April 2016, available in Greek at: <http://bit.ly/1Sa2lmH>.

As the Director of the Asylum Service noted at that time: “Insufferable pressure is being put on us to reduce our standards and minimize the guarantees of the asylum process... to change our laws, to change our standards to the lowest possible under the EU [Asylum Procedures] directive.”<sup>369</sup>

The United Nations Special Rapporteur on the human rights of migrants highlighted that the provisions with regard to the exceptional derogation measures for persons applying for asylum at the border raise “serious concerns over due process guarantees.”<sup>370</sup> It further noted that the duration of the fast track border procedure “raises concerns over access to an effective remedy, despite the support of NGOs. The Special Rapporteur is concerned that asylum seekers may not be granted a fair hearing of their case, as their claims are examined under the admissibility procedure, with a very short deadline to prepare.”<sup>371</sup>

In February 2019, the EU Fundamental Rights Agency (FRA) underlined that “almost three years of experience [of processing asylum claims in facilities at borders] in Greece shows, [that] this approach creates fundamental rights challenges that appear almost insurmountable.”<sup>372</sup>

Moreover, the UN High Commissioner for Refugees, following a visit in November 2019, “cautioned that faster processes to determine people’s status should not come at the expense of safeguards and standards, highlighting that the majority of arrivals to Greece this year were refugees, mostly Syrian and Afghan”.<sup>373</sup>

#### **Trigger and scope of application of the fast-track border procedure under Article 60(4) L 4375/2016**

According to the abovementioned Article 60(4) L 4375/2016, said procedure could be “exceptionally” applied in certain cases. Subsequently, the relevant Joint Decision by the Minister of Interior and Administrative Reconstruction and the Minister of National Defence, dated 31 August 2016,<sup>374</sup> referred to in Article 60(4) L 4375/2016, was issued on 26 October 2016.

Pursuant to the original wording of L 4375/2016, the duration of the application of the fast-track border procedure should not exceed 6 months from the publication of that law and would be prolonged for a further 3-month period by a decision issued by the Minister of Interior and Administrative Reconstruction.<sup>375</sup>

Since then, however, the duration of the fast-track border procedure had been repeatedly amended: under a June 2016 reform it would not exceed 6 months and could be extended for another 6 months,<sup>376</sup> and following an August 2017 reform it is applicable for 24 months from the publication of the latest amendment.<sup>377</sup> The May 2018 reform extended the validity of the procedure until the end of 2018,<sup>378</sup> and a December 2018 reform further prolonged it until the end of 2019.<sup>379</sup>

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<sup>369</sup> IRIN, ‘Greek asylum system reaches breaking point’, 31 March 2016, available at: <http://bit.ly/1RNCKja>.

<sup>370</sup> Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants on his mission to Greece*, A/HRC/35/25/Add.2, 24 April 2017, available at: <http://bit.ly/2rHF7kl>, para 78.

<sup>371</sup> Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants on his mission to Greece*, A/HRC/35/25/Add.2, 24 April 2017, para 82.

<sup>372</sup> FRA, Update of the 2016 Opinion of the European Union Agency for Fundamental Rights on fundamental rights in the ‘hotspots’ set up in Greece and Italy, February 2019, FRA Opinion - 3/2019, Vienna, 4 March 2019, available at: <https://bit.ly/2XYgl8B>, p. 7.

<sup>373</sup> UNHCR, Head of UNHCR calls for urgent response to overcrowding in Greek island reception centres, Europe to share responsibility, 28 November 2019, available at: <https://bit.ly/2zbDe3o>. See also, UNHCR urges Greece to strengthen safeguards in draft asylum law, 24 October 2019, available at: <https://bit.ly/3cyl1LU>.

<sup>374</sup> Joint Ministerial Decision for the application of the provisions of par. 4 of article 60 of the Law 4375/2016, No 13257/31.08.2016, Gov. Gazette 3455/B/26.10.2016, available at: <https://bit.ly/2x1kx11>.

<sup>375</sup> Article 80(26) L 4375/2016, as initially in force.

<sup>376</sup> Article 80(26) L 4375/2016, as amended by Article 86(20) L 4399/2016.

<sup>377</sup> Article 80(26) L 4375/2016, as amended by Article 96(4) L 4485/2017.

<sup>378</sup> Article 80(26) L 4375/2016, as amended by Article 28(23) L 4540/2018.

<sup>379</sup> Article 80(26) L 4375/2016, as amended by Article 7(3) L 4587/2018.

The impact of the EU-Turkey Statement has been, *inter alia*, a *de facto* dichotomy of the asylum procedures applied in Greece.<sup>380</sup> This is because, the procedure is applied in cases of applicants subject to the EU-Turkey Statement, i.e. applicants who have arrived on the Greek Eastern Aegean islands after 20 March 2016 and have lodged applications before the RAO of **Lesvos, Chios, Samos, Leros** and **Rhodes**, and the AAU of **Kos**. On the contrary, applications lodged before the Asylum Unit of **Fylakio** by persons who entered through the Greek-Turkish land border and remaining in the RIC of Fylakio in Evros are not examined under the fast-track border procedure.

### **Main features of the fast-track border procedure under Article 60(4) L 4375/2016**

The fast-track border procedure under Article 60(4) L 4375/2016, in force until end of 2019, provided among others that:

- (a) The registration of asylum applications, the notification of decisions and other procedural documents, as well as the receipt of appeals, may be conducted by staff of the Hellenic Police or the Armed Forces: In 2019, an average 50 police officers were assisting the Asylum Service in this procedure. Their tasks included fingerprinting of applicants, registrations, issuance and renewal of asylum seekers' cards, notification of decisions and other administrative actions.<sup>381</sup>
- (b) The interview of asylum seekers may also be conducted by personnel deployed by EASO. The initial provision of Article 60(4)(b) L 4375/2016 foresaw that the Asylum Service "may be assisted" in the conduct of interviews as well as any other procedure by staff and interpreters deployed by EASO. The possibility for the asylum interview to be conducted by an EASO caseworker was introduced by a subsequent amendment in June 2016.<sup>382</sup> As of May 2018, this possibility also exists for Greek-speaking EASO personnel in the **Regular Procedure**. The Regulation of the Asylum Service, adopted in February 2018, expressly states that its provisions are also binding for EASO staff assisting the Asylum Service.<sup>383</sup> In 2019, a number between 173 and 261 EASO caseworkers have been recruited during the year in the RAO of **Lesvos, Chios, Samos, Leros**, and the AAU of **Kos**.<sup>384</sup>
- (c) The asylum procedure shall be concluded in a very short time period (no more than 2 weeks).

More precisely, according to points (d) and (e) of the provision:

- The time that was given to applicants in order to exercise their right to "sufficiently prepare and consult a legal or other counselor who shall assist them during the procedure" was limited to one day;
- Decisions should be issued, at the latest, the day following the conduct of the interview and should be notified, at the latest, the day following its issuance;
- The deadline to submit an appeal against a negative decision was 5 days from the notification of this decision. In case that the first instance decision was not notified to the applicant for whatever reason, the deadline to submit an appeal was 15 days from the expiry of the asylum seeker's card or 15 days for the issuance of the decision if the card has already expired;<sup>385</sup>
- When an appeal is lodged, its examination is carried out no earlier than 2 days and no later than 3 days after its submission, which means that in the first case appellants must submit any

<sup>380</sup> Submission of the Greek Council for Refugees to the Committee of Ministers of the Council of Europe in the case of M.S.S. v. Belgium & Greece (Appl. No 30696/09) and related case, 9 May 2019, available at: <https://bit.ly/2XYhHpj>

<sup>381</sup> Information provided by the Asylum Service, 17 February 2020.

<sup>382</sup> Article 80(13) L 4399/2016.

<sup>383</sup> Ministerial Decision 3385, Gov. Gazette B' 417/14.2.2018.

<sup>384</sup> Information provided by the Asylum Service, 17 February 2020.

<sup>385</sup> Article 60(4) L 4375/2016, as was amended by Article 28(4) L 4540/2018.

supplementary evidence or a written submission the day after the notification of a first instance negative decision; or within 2 days maximum if the appeal is examined within 3 days;

- In case the Appeals Authority decided to conduct an oral hearing, the appellant was invited before the competent Committee one day before the date of the examination of their appeal and he/she could be given, after the conclusion of the oral hearing, one day to submit supplementary evidence or a written submission. Decisions on appeals should be issued, at the latest, 2 days following the day of the appeal examination or the deposit of submissions and should be notified at the latest on the day following their issuance. The notification of the decision might “alternatively” be done to the representative or lawyer of the appellant who had signed the appeal or who had been present during the examination of the appeal or had submitted observations before the Appeals Committee, the Head of the RIC, or online on a specific database.<sup>386</sup>

### **Exempted categories from the fast-track border procedure under Article 60(4) L 4375/2016**

According to Article 60(4)(f) L 4375/2016, the fast-track border procedure was not applied to vulnerable groups or persons falling within the family provisions of the Dublin III Regulation.<sup>387</sup>

It is noted that the Administrative Court of Appeals of **Piraeus**, under the previous legislative framework (L 4375/2016), has repeatedly annulled decisions of the Appeals Committees issued under the fast-track border procedure, on the ground that the applicant should have been exempted therefrom and referred to the regular procedure for reasons of vulnerability.<sup>388</sup> Besides, the said Administrative Court has clearly ruled that the applicant is under no obligation to prove “procedural damage” (*δικονομική βλάβη*) stemming from the failure to exempt him or her from the fast-track border procedure.<sup>389</sup>

In a Decision of February 2020, the Administrative Court of Appeals of **Piraeus**, annulled the second instance decision. The case concerned an Eritrean applicant that had been identified as a person belonging to a vulnerable group. Nevertheless the Asylum Service and the Appeals Committee examined his application under the fast track border procedure. The Court held that the Appeals Committee illegally rejected the applicant’s Appeal, as the Committee did not take into consideration the request of the applicant to be exempted from the fast track border procedure on the basis of his vulnerability and proceeded with the examination of the Appeal under the fast-track border procedure.<sup>390</sup>

The identification of vulnerability of persons arriving on the islands in the context of the fast-track border procedure on the islands takes place either by the RIS prior to the registration of the asylum application, or during the asylum procedure (see [Identification](#)).

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<sup>386</sup> Article 62(8) L 4375/2016, inserted by Article 28(20) L 4540/2018. The Ombudsman has stated that this provision limits effective access to judicial protection: Ombudsman, Παρατηρήσεις στο σχέδιο νόμου Προσαρμογή της Ελληνικής Νομοθεσίας προς τις διατάξεις της Οδηγίας της Οδηγίας 2013/33/ΕΕ (αναδιατύπωση 29.6.13) σχετικά με τις απαιτήσεις για την υποδοχή των αιτούντων διεθνή προστασία κ.ά. διατάξεις, April 2018, available in Greek at: <https://bit.ly/2unUcpH>.

<sup>387</sup> Article 60(4)(f) L 4375/2016, citing Articles 8-11 Dublin III Regulation and the categories of vulnerable persons defined in Article 14(8) L 4375/2016.

<sup>388</sup> See e.g. Administrative Court of Appeal of Piraeus, Decision 558/2018, available in Greek at: <https://bit.ly/2WbqvDY>; Administrative Court of Appeal of Piraeus, Decision 642/2018, available in Greek at: <https://bit.ly/3eFglpq>; Administrative Court of Appeal of Piraeus, Decision 563/2018, available in Greek at: <https://bit.ly/2FgXcdR>.

<sup>389</sup> Administrative Court of Appeal of Piraeus, Decision 519/2018, available in Greek at: <https://bit.ly/2JiaUB0>; See also, Decision 231/2018, available in Greek at: <https://bit.ly/3eFglpq>.

<sup>390</sup> Administrative Court of Appeal of Piraeus, Decision of 21 February 2020, on file with the author.

In 2017, 2018 and 2019, the Asylum Service took the following decisions:

<b>First instance decisions taken in the fast-track border procedure: 2017-2019</b>			
<b>Decisions on admissibility</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Inadmissible based on safe third country	912	395	235
Admissible based on safe third country	365	116	44
Admissible pursuant to the Dublin family provisions	3,123	4,005	2,010
Admissible for reasons of vulnerability	15,788	21,020	25,967
<b>Decisions on the merits</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Refugee status	1,151	4,183	4,235
Subsidiary protection	225	2,047	3,186
Rejection on the merits	1,648	3,364	3,129
<b>Total decisions</b>	<b>23,212</b>	<b>35,134</b>	<b>39,505</b>

Source: Asylum Service

This data, particularly the number of asylum seekers identified as vulnerable, should be read in conjunction with the profile of the persons arriving on the Greek islands in 2019, the vast majority of whom have lived through extreme violence and traumatic events. Out of the total number of 59,726 persons arriving in Greece by sea in 2019, the majority originated from Afghanistan (40%), Syria (27%) and the Democratic Republic of the Congo (7%). Typically, the majority of Afghans and Syrians arrive in family groups. More than half of the population were women (23%) and children (36%).<sup>391</sup>

### 5.1.2. The fast-track border procedure since the entry into force of the IPA on 1 January 2020

A “fast-track border procedure” is also foreseen by the new law on asylum (IPA), in force since 1 January 2020. Article 90(3) IPA largely repeats the provision of Article 60(4) L. 4375/2016. However, as opposed to the previous Article 60(4) L. 4375/2016, the IPA does not refer to the fast track border procedure as a procedure applied by way of exception.

More particularly, Article 90(3) IPA foresees that said procedure can be applied for as long as third country nationals who have applied for international protection at the border or at airport / port transit zones or while remaining in Reception and Identification Centres, are regularly accommodated in a spot close to the borders or transit zones. A Joint Ministerial Decision issued on 31 December 2019, foresees the application of the fast track border procedure under Art. 90 (3) up until 31 December 2020.<sup>392</sup> In practice it is also applicable to those arrived on the Greek Eastern Aegean islands.

#### **Main features of the procedure of the fast-track border procedure under the IPA**

The fast-track border procedure under Article 90(3) IPA, in force since January 2020, repeats to a large extent the previous legal framework and provides among others that:

- (a) The registration of asylum applications, the notification of decisions and other procedural documents, as well as the receipt of appeals, may be conducted by staff of the Hellenic Police or the Armed Forces, if police staff is not sufficient.

<sup>391</sup> UNHCR, *Greece – Sea arrivals dashboard*, December 2019, available at: <https://bit.ly/2KukO0k>. Arrivals during 2019 are 84% higher than those in 2018.

<sup>392</sup> Joint Ministerial Decision for the application of the provisions of par. 3 and 5 of article 90 of IPA, No 1333/30.12.2019, Gov. Gazette 4892/B/31.12.2019.

- (b) The interview of asylum seekers may also be conducted by personnel deployed by EASO. However, Article 90(3) also introduced the possibility, “in particularly urgent circumstances”, the interview to be conducted by trained personnel of the Hellenic Police or the Armed Forces, as opposed to the strict limitation to registration activities under the previous L. 4375/2016.
- (c) The asylum procedure shall be concluded in a short time period.

This may result in the underestimation of the procedural guarantees provided by the international, European and national legal framework, including the right to be assisted by a lawyer. As these truncated time limits undoubtedly affect the procedural guarantees available to asylum seekers subject to an accelerated procedure, as such, there should be an assessment of their conformity with Article 43 of the recast Asylum Procedures Directive, which does not permit restrictions on the procedural rights available in a border procedure for reasons related to large numbers of arrivals.

More precisely, according to Article 90(3)(c) IPA:

- ❖ The Asylum Service shall take a first instance decision within 7 days;
- ❖ The deadline for submitting an appeal against a negative decision is 10 days;
- ❖ The examination of an appeal is carried out within 4 days. The appellant is notified within 1 day to appear for a hearing or to submit supplementary evidence. The second instance decision shall be issued within 7 days.

The concerns which are mentioned above as regards the short deadlines applying to the fast-track border procedure under the previous L 4375/2016 also apply here. In any event, it should be noted that these very short time limits seem to be to exclusively at the expense of applicants for international protection in practice. In fact, whereas processing times take several months on average, applicants still have to comply with the very short time limits provided by Article 90(3) IPA.<sup>393</sup> The average time between the full registration and the issuance of a first instance decision under the fast-track border procedure was 228 days in 2019, i.e. over 7 months.<sup>394</sup>

The Greek Asylum Service is under a constant pressure to accelerate the procedures on the islands, which was also one of the reasons invoked for the amendment of national legislation in late 2019. However the FRA has found “even with the important assistance the European Asylum Support Office provides, it is difficult to imagine how the processing time of implementing the temporary border procedure under Article 90(3) IPA or the regular asylum procedure on the islands can be further accelerated, without undermining the quality of decisions. Putting further pressure on the Greek Asylum Service may undermine the quality of first instance asylum decisions, which in turn would prolong the overall length of procedure, as more work would be shifted to the appeals stage.”<sup>395</sup>

In practice until 2019, which will be similar as of 2020, the fast-track border procedure has been variably implemented depending on the profile and nationality of the asylum seekers concerned (see also [Differential Treatment of Specific Nationalities in the Procedure](#)). Within the framework of that procedure:

- Applications by Syrian asylum seekers are examined on admissibility on the basis of the [Safe Third Country](#) concept;
- Applications by non-Syrian asylum seekers from countries with a recognition rate below 25% are examined only on the merits;

<sup>393</sup> FRA, *Update of the 2016 FRA Opinion on fundamental rights in the hotspots set up in Greece and Italy*, 4 March 2019, available at: <https://bit.ly/2HeRg79>, 26.

<sup>394</sup> Information provided by the Asylum Service, 17 February 2020.

<sup>395</sup> FRA, *Update of the 2016 FRA Opinion on fundamental rights in the hotspots set up in Greece and Italy*, 4 March 2019, 26 “in **Kos**, the average time from the lodging of the application until the first interview with EASO was 41 days while from the date of the interview until the issuance of the recommendation by EASO was 45 days”.

- Applications by non-Syrian asylum seekers from countries with a recognition rate over 25% are examined on both admissibility and merits (“merged procedure”). In such cases, according to practice followed by EASO staff, the majority of applications for international protection of the aforementioned asylum seekers, is found to be inadmissible in the context of the safe third country concept. Subsequently, the Asylum Service declares such applications admissible and proceeds to the examination of them on the merits.

It has been highlighted that “the practice of applying different asylum procedures according to the nationalities of the applicants is arbitrary, as it is neither provided by EU nor by domestic law. In addition, it violates the principle of non-discrimination as set out in Article 3 of the Geneva Convention of 28 July 1951 relating to the status of refugees. Instead, it is explicitly based on EASO’s undisclosed internal guidelines, which frame the hotspot asylum procedures in order to implement the EU-Turkey statement.”<sup>396</sup>

### Exempted categories from the fast-track border procedure under the IPA

As opposed to the previous legislation, the IPA repeals the exception of persons belonging to vulnerable groups and applicants falling under Dublin Regulation from the fast-track border procedure (see [Special Procedural Guarantees](#)). In particular unaccompanied minors are concerned Article 90(4) IPA provides that unaccompanied minors are examined under the fast track border procedure in case that

- the minor comes from a country designated as a safe country of origin in accordance with the national list
- he/she submits a subsequent application
- he/she is considered a threat to the public order/national security
- there are reasonable grounds that a country can be considered as a safe third country for the minor; and given that it is in line with the best interest of the minor.
- the unaccompanied minor has misled the authorities by submitting false documents or he/she has destroyed or he/she has lost in bad faith his/her identification documents or travel document, under the conditions that he/she or his/her guardian will be given the opportunity to provide sufficient grounds on this.

## 5.2. Personal interview

### Indicators: Fast-Track Border Procedure: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the border procedure?

Yes  No

❖ If so, are questions limited to nationality, identity, travel route?  Yes  No

❖ If so, are interpreters available in practice, for interviews?  Yes  No

2. Are interviews conducted through video conferencing?  Frequently  Rarely  Never

According to Article 60(4)(c) L 4375/2016, asylum seekers may prepare for the interview and consult a legal or other counselor who shall assist them during the procedure within 1 day following the submission of their application for international protection. Decisions shall be issued, at the latest, the day following the conduct of the interview and shall be notified, at the latest, the day following its issuance

<sup>396</sup> Greens/EFA, *The EU-Turkey Statement and the Greek Hotspots: A failed European Pilot Project in Refugee Policy*, June 2018, available at: <https://bit.ly/2sJM2H4>, 17.



Under the previous fast-track border procedure as per Article 60(4) L 4375/2016, the personal interview could be conducted by Asylum Service staff or EASO personnel. According to Article 90(3) IPA, in force since 1 January 2020, the personal interview may be conducted by Asylum Service staff or EASO personnel or, “in particularly urgent circumstances”, by trained personnel of the Hellenic Police or the Armed Forces.<sup>397</sup>

As regards EASO, its competence to conduct interviews had already been introduced by an amendment to the law in June 2016, following an initial implementation period of the EU-Turkey Statement marked by uncertainty as to the exact role of EASO officials, as well as the legal remit of their involvement in the asylum procedure. The EASO Special Operating Plans to Greece foresaw a role for EASO in conducting interviews in different asylum procedures, drafting opinions and recommending decisions to the Asylum Service throughout 2017, 2018 and 2019.<sup>398</sup> A similar role is foreseen in the Operational & Technical Assistance Plan to Greece 2020, including in the Regular procedure.<sup>399</sup>

As found by the European Ombudsman in 2018,

*“in light of the Statement of the European Council of 23 April 2015 (Point P), in which the European Council commits to ‘deploy EASO teams in frontline Member States for joint processing of asylum applications, including registration and finger-printing’, EASO is being encouraged politically to act in a way which is, arguably, not in line with its existing statutory role. Article 2(6) of EASO’s founding Regulation (which should be read in the light of Recital 14 thereof, which speaks of “direct or indirect powers”) reads: ‘The Support Office shall have no powers in relation to the taking of decisions by Member States’ asylum authorities on individual applications for international protection’.”*<sup>400</sup>

Furthermore, in 2019 and following a complaint with regards an individual case, the European Ombudsman found that

*“EASO’s failure to address adequately and in a timely way the serious errors committed in [...] case constituted maladministration”*.<sup>401</sup>

During 2019, the content of the personal interview varied depending on the asylum seeker’s nationality. Interviews of Syrians mostly focused only on admissibility under the [Safe Third Country](#) concept and were mainly limited to questions regarding their stay in Turkey. Non-Syrian applicants from countries with a recognition rate below 25% were only examined on the merits, in interviews which could be conducted by EASO caseworkers. Finally, non-Syrian applicants from countries with a rate over 25% undergo a so-called “merged interview”, where the “safe third country” concept was examined together with the merits of the claim.

In practice, in cases where the interview is conducted by an EASO caseworker, he or she provides an opinion / recommendation (*πρόταση / εισήγηση*) on the case to the Asylum Service, that issues the

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<sup>397</sup> Article 90(3)(b) IPA.

<sup>398</sup> EASO, *Special Operating Plan to Greece 2017*, December 2016, available at: <http://bit.ly/2h1M2dF>, p. 9; EASO, *Operating Plan to Greece 2018*, December 2017, available at: <http://bit.ly/2BO6EAo>, p. 13-14, EASO, *Operating Plan to Greece 2019*, 19 December 2018, available at: <https://bit.ly/2W6vJB2>, p. 14-15.

<sup>399</sup> EASO, *Operational & Technical Assistance Plan to Greece*, 20 December 2019, available at: <https://bit.ly/2VUAj6P>, p. 14.

<sup>400</sup> European Ombudsman, *Decision in case 735/2017/MDC on the European Asylum Support Office’s’ (EASO) involvement in the decision-making process concerning admissibility of applications for international protection submitted in the Greek Hotspots, in particular shortcomings in admissibility interviews*, 5 July 2018, available at: <https://bit.ly/2XVUfXq>, para 33.

<sup>401</sup> European Ombudsman, *Decision in case 1139/2018/MDC on the conduct of experts in interviews with asylum seekers organised by the European Asylum Support Office*, 30 September 2019, available at: <https://bit.ly/3azSi7Y>, para. 18

decision. The transcript of the interview and the opinion / recommendation are written in English, which is not the official language of the country.<sup>402</sup> The issuance of an opinion / recommendation by EASO personnel to the Asylum Service is not foreseen by any provision in national law and thus lacks legal basis.<sup>403</sup> In 2019, EASO conducted 6,047 interviews and issued 5,365 opinions in the fast-track border procedure during that year, out of which 1,283 opinions recommended the referral of the asylum seeker to the regular procedure for reasons of vulnerability.<sup>404</sup>

Finally, a caseworker of the Asylum Service, without having had any direct contact with the applicant e.g. to ask further questions, issues the decision based on the EASO record and recommendation.<sup>405</sup>

In November 2019, a number of 28 applications examined under the fast-track border procedure on **Lesvos** island, have been rejected at first instance by the Lesvos RAO, without undergoing any asylum interview before, contrary to the guarantees of the Directive 2013/32/EU. The applicants all belonged to nationalities with a recognition rate under 25%. All negative decisions mentioned with an identical wording that “the asylum seeker did not attend a personal interview since repeated attempts to find interpretation services for the mother tongue and the language of communication of the asylum seeker proved unsuccessful”. In some of these cases the applicants were served fictitious invitations to interviews scheduled for the same day the decision was issued.<sup>406</sup>

In a number of these cases, the Appeals Committees reversed the first instance decisions. According to the second instance Decision, the Committee considered that the failure to conduct an interview was contrary to the law and referred the cases back to the first instance for an interview to take place.<sup>407</sup>

Moreover, and following a parliamentary priority question submitted to the European Commission on 25 November 2019 with regard to these cases,<sup>408</sup> the European Commission noted that

*“[t]he Directive on asylum procedures (2013/32/EU) guarantees that the asylum applicants’ are given the opportunity of a personal interview on their applications for international protection, with certain limited exceptions. As regards the interpretation, the Directive provides that the communication shall take place in the language preferred by the applicant unless there is another language which he or she understands and in which he or she is able to communicate clearly”.*<sup>409</sup>

In February 2020, in at least 3 cases known to GCR, the Asylum Service on **Lesvos** (Lesvos RAO) rejected the applications for international protection as manifestly unfounded on the grounds of non-cooperation with the competent authority, as they had to undergo an interview in the official language of their country of origin and not in their native language and consequently communication was not possible

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<sup>402</sup> This issue, among others, was brought before the Council of State, which ruled in September 2017 that the issuance of EASO opinions / recommendations in English rather than Greek does not amount to a procedural irregularity, insofar as it is justified by the delegation of duties to EASO under Greek law and does not result in adversely affecting the assessment of the applicant’s statements in the interview. The Council of State noted that Appeals Committees are required to have good command of English according to Article 5(3) L 4375/2016: Council of State, Decisions 2347/2017 and 2348/2017, 22 September 2017, para 33.

<sup>403</sup> Article 60(4)(b) L 4375/2016 and 90(3)(b) only refer to the conduct of interviews by EASO staff.

<sup>404</sup> Information provided by the Asylum Service, 17 February 2020.

<sup>405</sup> AIRE Centre, et al., *Third party intervention in J.B. v. Greece*, 4 October 2017, available at: <http://bit.ly/2qSRxoU>, 10-11.

<sup>406</sup> GCR, “Απόρριψη 28 αιτούντων άσυλο από Αφρικανικές χώρες λόγω έλλειψης διερμηνείας - Ανησυχία εκφράζουν νομικές οργανώσεις για την άνευ προηγουμένου και αντίθετη στο ελληνικό, ευρωπαϊκό & διεθνές δίκαιο διοικητική πρακτική του Περιφερειακού Γραφείου Ασύλου”, 22 November 2019, available in Greek at: <https://bit.ly/2WRV3wE>; Refugee Support Aegean, Rejection of 28 asylum seekers from African countries due to the lack of interpreters, 24 November 2019, available at: <https://bit.ly/2Y0dKAo>.

<sup>407</sup> See inter alia Decision of the 3<sup>rd</sup> Appeals Committee as of 14 February 2020, on file with the author.

<sup>408</sup> Priority question for written answer to the Commission, Rule 138, 25 November 2019, available at: <https://bit.ly/3bAzc2Q>.

<sup>409</sup> European Commission, EL, P-004017/2019, 5 February 2020, available at: <https://bit.ly/34Ty205>.

during the interview. This is for example the case of a Senegalese applicant, member of the Wolof ethnic group, who had to undergo his asylum interview in French. The interview lasted for five minutes and at the end of the transcript of the interview the caseworker notes: “The procedure is interrupted due to the inability of the applicant to understand the declared language for conducting the interview”.<sup>410</sup> Despite this and in accordance with the provisions of the IPA, the application has been rejected as manifestly unfounded,<sup>411</sup> without offering the applicant the possibility to undergo an interview in a language that he understands or that he is able to communicate clearly.

With regard to the possibility of personnel of Hellenic Police or Armed Forces to conduct personal interviews, Amnesty international has underlined that the application of such provision “would be a serious backward step that will compromise the impartiality of the asylum procedure”.<sup>412</sup>

### Quality of interviews by EASO

The quality of interviews conducted by EASO caseworkers has been highly criticised and its compatibility even with EASO standards has been questioned. *Inter alia*, quality gaps such as lack of knowledge about countries of origin, lack of cultural sensitivity, questions based on a predefined list, closed and leading questions, repetitive questions, frequent interruptions and unnecessarily exhaustive interviews and conduct preventing lawyers from asking questions at the end of the interview have been reported.<sup>413</sup>

In 2018, following the ECCHR complaint, the European Ombudsman found that “there are genuine concerns about the quality of the admissibility interviews as well as about the procedural fairness of how they are conducted”.<sup>414</sup> In the same year, a comparative analysis of 40 cases of Syrian applicants whose claims were examined under the fast-track border procedure further corroborated the use of “inappropriate communication methods and unsuitable questions related to past experience of harm and/or persecution” which include closed questions impeding a proper follow-up, no opportunity to explain the case in the applicant’s own words, failure to consider factors that are likely to distort the applicant’s ability to express him- or herself properly (such as mental health issues or prior trauma), lack of clarification with regard to vague or ambiguous concepts mentioned by the interviewer, potential inconsistencies or misunderstandings regarding critical aspects of the case that could lead to confusion and/or the inability of the applicant to express him- or herself effectively, and more generally, violations of the right to be heard.”<sup>415</sup>

In a 2019 comparative analysis, it has been noted that in a number of cases EASO opinions often rely on outdated sources both with regard to the examination of the safe third country concept vis-a-vis Turkey and the examination of the merits of the applications. Moreover, failures as of the legal analysis in the EASO opinions have been identified.<sup>416</sup>

In 2019, following a complaint submitted before the European Ombudsman, EASO mentioned that in the context of quality feedback report, it had thoroughly examined the complainant’s case and stated that “EASO considered that the quality feedback report showed that the interviewer pursued a line of

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<sup>410</sup> Efsyn.gr, Απόρριψη ασύλου σε 5 λεπτά και με 7 λέξεις, 10 February 2020, available at: <https://bit.ly/2yuk7Bn>.  
<sup>411</sup> Article 78(9) and 88(2) IPA.

<sup>412</sup> Amnesty International, Submission on the Human Rights implications on the Government proposal to change the Greek Law on international protection, reception and returns, 24 October 2019, available at: <https://bit.ly/2XYyY1D>.

<sup>413</sup> See AIDA, Country Report Greece, 2017 Update, March 2018, 71-72.

<sup>414</sup> European Ombudsman, *Decision in case 735/2017/MDC on the European Asylum Support Office’s’ (EASO) involvement in the decision-making process concerning admissibility of applications for international protection submitted in the Greek Hotspots, in particular shortcomings in admissibility interviews*, 5 July 2018, available at: <https://bit.ly/2XVUfXq>, para 46.

<sup>415</sup> Greens/EFA, *The EU-Turkey Statement and the Greek Hotspots: A failed European Pilot Project in Refugee Policy*, June 2018, 19.

<sup>416</sup> ECRE, *the role of EASO operations in national asylum systems*, November 2019, 24.

questioning that was inappropriate for the case, and displayed a misunderstanding of the complainant's situation. Consequently, the case officer had "made a severe error of judgment when dealing with [that] case", and this should not have been approved by his manager. EASO also acknowledged that there were problems with the work of the interpreter". As found by the European Ombudsman, the "EASO's failure to address adequately and in a timely way the serious errors committed in Mr [...]’s case constituted maladministration".<sup>417</sup>

### 5.3. Appeal

#### Indicators: Fast-Track Border Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the border procedure?

❖ If yes, is it

❖ If yes, is it suspensive

Yes

Judicial

Yes

No

Administrative

Some grounds  No

#### Changes in the Appeals Committees

As already mentioned, the legal basis for the establishment of the Appeals Authority was amended twice in 2016 by L 4375/2016 in April 2016 and L 4399/2016 in June 2016, and then in 2017 by L 4661/2017 (see [Regular Procedure: Appeal](#)). These amendments were closely linked with the examination of appeals under the fast-track border procedure, following reported pressure to the Greek authorities from the EU on the implementation of the EU-Turkey Statement,<sup>418</sup> and "coincided with the issuance of positive decisions of the – at that time operational – Appeals Committees (with regard to their judgment on the admissibility) which, under individualised appeals examination, decided that Turkey is not a safe third country for the appellants in question",<sup>419</sup> as highlighted by the National Commission on Human Rights.

Further amendments to the procedure before the Appeals Committees that had been introduced by L 4540/2018 which echo the 2016 Joint Action Plan on Implementation of the EU-Turkey Statement,<sup>420</sup> and were visibly connected with pressure to limit the appeal steps and the procedure to be accelerated. This includes the possibility to replace judicial members of the Appeals Committee in the event of "significant and unjustified delays in the processing of appeals" by a Joint Ministerial Decision, following approval from the General Commissioner of the Administrative Courts.<sup>421</sup>

As noted in the Regular procedure, following the 2019 Reform the composition of the Appeals Committees has been re-amended. According to Article 116 IPA, the Appeals Committees shall consist of three judges and it is envisaged that the Independent Appeal Committees may operate in a single or three-member composition.

#### Rules and time limits for appeal

Similarly to the first instance fast-track border procedure, truncated time limits are also foreseen in the appeal stage, although a few improvements have been made following the introduction of the IPA.

<sup>417</sup> European Ombudsman, *Decision in case 1139/2018/MDC on the conduct of experts in interviews with asylum seekers organised by the European Asylum Support Office*, 30 September 2019, available at: <https://bit.ly/2yEqUs6>, para. 18

<sup>418</sup> See e.g. NCHR, 'Δημόσια Δήλωση για την τροπολογία που αλλάζει τη σύνθεση των Ανεξάρτητων Επιτροπών Προσφυγών', 17 June 2016, available in Greek at: <http://bit.ly/2k1Buhz>.

<sup>419</sup> NCHR, 'Public Statement regarding the amendment of the composition of the Independence Appeals Committees', 17 June 2016, available at: <http://bit.ly/2k1Buhz>. Unofficial translation by the author.

<sup>420</sup> European Commission, *Joint Action Plan on Implementation of the EU-Turkey Statement*, 8 December 2016, available at: <https://bit.ly/2JwpFQS>.

<sup>421</sup> Article 5(4) L 4375/2016, as amended by Article 28(3) L 4540/2018.

Whereas according to the previous Article 60(4) L 4375/2016, appeals against decisions taken in the fast-track border procedure had to be submitted before the Appeals Authority within 5 days,<sup>422</sup> contrary to 30 days in the regular procedure, the deadline for appealing a negative decision is now 10 days.<sup>423</sup>

The provisions of the IPA relating to the fictitious service (*πλασματική επίδοση*) of first instance decisions are also applicable to the fast track border procedure and thus the deadline for lodging an appeal against a first instance negative decision may expire without the applicant having been actually informed about the decision.<sup>424</sup>

### **Suspensive effect**

Since the entry into force of the IPA, the appeals before the Appeals Committees no longer have automatic suspensive effect as a general rule. The automatic suspensive effect of appeals depends on the type of decision challenged by the applicant (see [Admissibility Procedure: Appeal](#) and [Accelerated Procedure: Appeal](#)). With regard to applications rejected at first instance within the framework of the fast-track border procedure, the new law states, that a derogation from automatic suspensive effect of appeals can only be ordered provided that the individual benefits from the necessary assistance of an interpreter, legal assistance and at least one week to prepare the appeal before the Appeals Committee.<sup>425</sup>

The Appeals Committee examining the appeal must take a decision within 7 days,<sup>426</sup> contrary to 3 months in the regular procedure.<sup>427</sup> In practice this very short deadline is difficult to be met by the Appeals Committees.

As a rule, the procedure before the Appeals Committees must be written, based on the examination of the dossier. It is the duty of the Appeals Committee to request an oral hearing under the same conditions as in the regular procedure.<sup>428</sup>

Moreover, according to Articles 97(2) and 78(3) IPA which refer to the specific case of applicants residing in RIC on islands and whose applications are examined under the “fast-track border procedure”, a written certification of the Head of the Reception Centre should be sent to the Appeals Committee on the day prior of the examination of the Appeal. The certification must specify that the appellant lived at the specific RIC at the day of examination or, alternately, an appointed lawyer should appear before the Committee on the day of the examination of the appeal. If these conditions are not met, the appeal is rejected as “manifestly unfounded”.

Similarly to the concerns raised under the Regular procedure as regards the severity of these new procedural requirements, serious concerns with regard to the effectiveness of the remedy and the risk of a violation of the principle of non-refoulement are thus also applicable to appeals in the context of fast-track border procedures.

The provisions of the IPA<sup>429</sup> with regards the fictitious service (*πλασματική επίδοση*) of second instance decisions are also applicable in the fast track border procedure (see Regular Procedure)

As regards appeals against first instance inadmissibility decisions issued to Syrian asylum seekers based on the “safe third country” concept in the fast-track border procedure, it should be highlighted that in 2016,

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<sup>422</sup> Article 61(1)(d) L 4375/2016.

<sup>423</sup> Article 90(3)(c) IPA.

<sup>424</sup> Article 82 and 103 IPA.

<sup>425</sup> Article 104(3) IPA.

<sup>426</sup> Article 90(3)(c) IPA.

<sup>427</sup> Article 101(1)(a) IPA.

<sup>428</sup> Article 97 IPA.

<sup>429</sup> Article 82 and 103 IPA.

the overwhelming majority of second instance decisions by the Backlog Appeals Committees overturned the first instance inadmissibility decisions based on the safe third country concept. The Special Rapporteur on the human rights of migrants “commended the independence of the Committee, which, in the absence of sufficient guarantees, refused to accept the blanket statement that Turkey is a safe third country for all migrants — despite enormous pressure from the European Commission.”<sup>430</sup>

Conversely, following the amendment of the composition of the Appeals Committees, 98.2% of decisions issued by the Independent Appeals Committees in 2017 upheld the first instance inadmissibility decisions on the basis of the safe third country concept.

In 2018, the Appeals Committees issued 78 decisions dismissing applications by Syrian nationals as inadmissible based on the safe third country concept. As far as GCR is aware, there have been only two cases of Syrian families of Kurdish origin, originating from Afrin area, in which the Appeals Committee ruled that Turkey cannot be considered as a safe third country for said Syrian applicants due to the non-fulfilment of the connection criteria (see [Safe Third Country](#)).<sup>431</sup>

Respectively, in 2019 and as far as GCR is aware, all cases of Syrian Applicants examined under the fast-track border procedure have been rejected as inadmissible on the basis of the safe third country concept (29 Decisions),<sup>432</sup> if no vulnerability was identified or no grounds in order the case to be referred for humanitarian status were present. To the knowledge of GCR, there have been only two decisions from the Appeals Committee’s Decision so far in 2020, in cases supported by GCR, that reversed the first instance inadmissible decision and in which the Appeals Committee accepted the Appeals and declared them as admissible (see **Safe Third Country**).

## Judicial review

The general provisions regarding judicial review, as amended in 2018 and 2019, are also applicable for judicial review issued within the framework of the fast-track border procedure and concerns raised with regard to the effectiveness of the remedy are equally valid (see [Regular Procedure: Appeal](#)). Thus, among others, the application for annulment before the Administrative Court does not have automatic suspensive effect, even if combined with an application for suspension. Suspensive effect is only granted by a relevant decision of the Court. This judicial procedure before the Administrative Courts is not accessible to asylum seekers without legal representation.

According to practice, appellants whose appeals are rejected within the framework of the fast-track border procedure are immediately detained upon the notification of the second instance negative decision and face an imminent risk of readmission to Turkey. The findings of the Ombudsman, that detainees arrested following a second instance negative decision are not promptly informed of their impending removal,<sup>433</sup> are still valid.

The IPA has further hindered the effective access to judicial review for appellants for whom their appeal has been rejected within the framework of the fast-track border, i.e. who remain under a geographical limitation on the Aegean Islands or are detained on the Aegean Islands following the notification of the second instance decision. Article 115(2) IPA foresees that the First Instance Administrative Court of Athens is the competent Court for submitting legal remedies against second instance negative decisions

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<sup>430</sup> Human Rights Council, *Report of the Special rapporteur on the human rights of migrants on his mission to Greece*, A/HRC/35/25/Add.2, 24 April 2017, para 85.

<sup>431</sup> 9<sup>th</sup> Independent Appeals Committee, Decisions 20802/25.9.2018 and 20898/26.9.2018, 25 September 2018, available at: <https://bit.ly/2CjbmcD>.

<sup>432</sup> Information provided by the Appeals Authority on 21 April 2020.

<sup>433</sup> Ombudsman, *Return of third-country nationals – Special Report 2017*, 2018, available at: <https://bit.ly/2TG2wjv>.

with regards application submitted on the Aegean islands. Thus, legal remedies regarding appellants who reside or even are detained on the Aegean Islands, should be submitted by a lawyer before the Administrative Court of Athens. By taking into consideration the geographical distance and the practical obstacles (for example to appoint a lawyer able to submit the legal remedy in Athens) this may render the submission of legal remedies non accessible for those persons.<sup>434</sup>

Given the constraints that detained persons face vis-à-vis access to legal assistance, the fact that legal aid is not foreseen by law at this stage, that an onward appeal can only be submitted by a lawyer, and lack of prompt information about impending removal, access to judicial review for applicants receiving a second instance negative decision within the framework of the fast-track border procedure is severely hindered (see Regular Procedure: Judicial Review).

#### 5.4. Legal assistance

##### Indicators: Fast-Track Border Procedure: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?  
 Yes  With difficulty  No  
❖ Does free legal assistance cover:  Representation in interview  
 Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?  
 Yes  With difficulty  No  
❖ Does free legal assistance cover  Representation in courts  
 Legal advice

The IPA does not contain special provisions regarding free legal assistance in the fast-track border procedure. The general provisions and practical hurdles regarding legal aid are also applicable here (see section on [Regular Procedure: Legal Assistance](#)).

State-funded legal aid is not provided for the fast-track border procedure at first instance. Therefore, legal assistance at first instance is made available only by NGOs based on capacity and areas of operation, while the scope of these services remains severely limited, bearing in mind the number of applicants subject to the fast-track border procedure.

As regards the second instance, as of 31 December 2019, there were in total 5 lawyers registered in the register of lawyers, under the state-funded legal aid scheme, who had to provide legal aid services to the rejected applicants at the appeal stage under the fast-track border procedure on the five islands of Eastern Aegean and Rhodes. More specifically, there was one lawyer on **Lesvos**, one lawyer on **Chios**, one lawyer on **Kos** and two lawyers on **Rhodes**.<sup>435</sup> No lawyers under the state-funded legal aid scheme were present as of 31 December 2019 on **Samos** – one of the two islands with the largest number of asylum seekers and **Leros**.

By decision of the Asylum Service issued as of 31 December 2019, 9 lawyers were appointed on the islands in order to provide free legal aid on the second instance. These lawyers have been appointed to provide free legal aid under the state funded legal aid scheme at second instance as follows: 2 lawyers on **Lesvos**, 1 lawyer on **Samos**, 1 lawyer on **Chios**, 1 lawyer on **Kos**, 2 lawyers on **Rhodes**.<sup>436</sup>

<sup>434</sup> *Mutandis mutandis* ECHR, *Kaak v. Greece*, Application No 34215/16, Judgment of 3 October 2019.

<sup>435</sup> Information provided by Asylum Service.

<sup>436</sup> Asylum Service, Decision No 20165/2019, 13 December 2019.

Given the number of the lawyers appointed under the state funded legal aid scheme and the number of persons who are in need of legal assistance, the provision of free legal aid for appellants under the fast track border procedure remains limited, if not available.

As underlined in a report issued by Oxfam and GCR, “[o]n the Greek islands the situation is far worse, with only two out of 100 people able to get the free legal aid needed to appeal their cases. On Lesbos, for most of 2018, there were no state funded lawyers for the appeal stage and now, in 2019, there is only one. Every month approximately 50 to 60 asylum seekers who are rejected in the first instance require legal aid at the appeal stage. But the single state-appointed lawyer only has capacity to assist a maximum of 10 to 17 new cases, depending on the month”.<sup>437</sup>

As also mentioned in the Regular Procedure: Legal assistance no tailored state funded free legal aid scheme exists for submitting judicial remedies before Courts against a second instance negative decision.

## 6. Accelerated procedure

### 5.1. General (scope, grounds for accelerated procedures, time limits)

The IPA provides that the basic principles and guarantees applicable to the regular procedure are applied to the accelerated procedure and that “the accelerated procedure shall have as a sole effect to reduce the time limits”.<sup>438</sup> The wording of the law is misleading, however, given that the accelerated procedure as amended by the reform entails exceptions from automatic suspensive effect and thereby applicants’ right to remain on the territory. According to Art. 83(4) IPA the examination of an application under the accelerated procedure must be concluded within 20 days, subject to the possibility of a 10-day exception. Until the end of 2019, L 4375/2016, the examination of an application under the accelerated procedure, according to L. 4375/2016, must be concluded within 30 days,<sup>439</sup> although the possibility to extend the time limits applies as in the [Regular Procedure](#).

The Asylum Service is in charge of taking first instance decisions for both regular and accelerated procedures.

An application is being examined under the accelerated procedure when<sup>440</sup>:

- (a) The applicant comes from a [Safe Country of Origin](#);
- (b) The application is manifestly unfounded. An application is characterised as manifestly unfounded where the applicant, during the submission of the application and the conduct of the personal interview, invokes reasons that manifestly do not comply with the status of refugee or of subsidiary protection, or where he or she has presented manifestly inconsistent or contradictory information, manifestly lies or manifestly gives improbable information, or information which is contrary to adequately substantiated information on his or her country of origin, which renders his or her statements of fearing persecution under PD 141/2013 as clearly unconvincing;
- (c) The applicant has misled the authorities by presenting false information or documents or by withholding relevant information or documents regarding his/her identity and/or nationality which could adversely affect the decision;
- (d) The applicant has likely destroyed or disposed in bad faith documents of identity or travel which would help determine his/her identity or nationality;

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<sup>437</sup> Oxfam and GCR, No-Rights Zone. How people in need of protection are being denied crucial access to legal information and assistance in the Greek islands’ EU ‘hotspot’ camps, available at: <https://go.aws/3azMUJy>.

<sup>438</sup> Art. 83(1) IPA.

<sup>439</sup> Article 51(2) L 4375/2016, as amended by Article 28(9) L 4540/2018.

<sup>440</sup> Art. 83(4) IPA.



- (e) The applicant has submitted the application only to delay or impede the enforcement of an earlier or imminent deportation decision or removal by other means;
- (f) The applicant refuses to comply with the obligation to have his or her fingerprints taken.

The number of asylum applications subject to the accelerated procedure in 2019 is not available.<sup>441</sup>

The IPA extends the list of cases that can be examined under the accelerated procedures. Article 83(7) IPA repeats the above list and also adds the following cases which are examined under the accelerated procedure:

- the applicant submitted a subsequent application;
- the applicant entered the country “illegally” (sic) or he/she prolongs “illegally” his/her stay and without good reason, he/she did not present himself/herself to the authorities or he/she did not submit an asylum application as soon as possible, given the circumstances of his/her entrance;
- the applicant may be considered on serious grounds as a threat to the public order or national security;
- the applicant is a person belonging to a vulnerable group under the conditions that he/she receives appropriate support in accordance with the provisions with regards “Applicants in need of special procedural guarantees”.

## 5.2. Personal interview

### Indicators: Accelerated Procedure: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the accelerated procedure?  Yes  No
  - ❖ If so, are questions limited to nationality, identity, travel route?  Yes  No
  - ❖ If so, are interpreters available in practice, for interviews?  Yes  No
2. Are interviews conducted through video conferencing?  Frequently  Rarely  Never

The conduct of the personal interview does not differ depending on whether the accelerated or regular procedure is applied (see section on [Regular Procedure: Personal Interview](#)).

## 5.3. Appeal

### Indicators: Accelerated Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the accelerated procedure?
  - Yes  No
  - ❖ If yes, is it  Judicial  Administrative
  - ❖ If yes, is it suspensive  Yes  No

Since the entry into force of the IPA, the time limit for lodging an appeal against a decision in the accelerated procedure is 20 days,<sup>442</sup> as opposed to 30 days under the regular procedure. Under the

<sup>441</sup> Information provided by the Asylum Service, 17 February 2020.

<sup>442</sup> Article 92(1)(b) IPA.

previous law L. 4375/2016, this was “at the earliest 10 days” after the submission of the appeal.<sup>443</sup> According to Article 101(1)(b) IPA, the Appeals Committee must reach a decision on the appeal within 40 days of the examination. Before the entry into force of the IPA, the Appeals Committee had to reach a decision on the appeal within 2 months.<sup>444</sup>

Following the 2019 reform, appeals in the accelerated procedure in principle do not have automatic suspensive effect.<sup>445</sup> The Appeals Committee decides on appeals in the accelerated procedure and appeals against manifestly unfounded applications in single-judge format.<sup>446</sup>

#### 5.4. Legal assistance

##### Indicators: Accelerated Procedure: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?  
 Yes       With difficulty       No  
❖ Does free legal assistance cover:  Representation in interview  
 Legal advice
  
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?  
 Yes       With difficulty       No  
❖ Does free legal assistance cover  Representation in courts  
 Legal advice

The same legal provisions and practice apply to both the regular and the accelerated procedure (see [Regular Procedure: Legal Assistance](#)).

### D. Guarantees for vulnerable groups

#### 1. Identification

##### Indicators: Identification

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers?  
 Yes       For certain categories       No  
❖ If for certain categories, specify which:
  
2. Does the law provide for an identification mechanism for unaccompanied children?  
 Yes       No

The IPA, entered into force in January 2020, has made significant amendments to the definition of vulnerable persons and persons in need of special procedural guarantees (see below).

Before the entry into force of the IPA, Article 14(8) L 4375/2016 relating to **reception and identification** procedures offered principally to **newcomers**, the following groups were considered as vulnerable groups: unaccompanied minors; persons who have a disability or suffering from an incurable or serious illness; the elderly; women in pregnancy or having recently given birth; single parents with minor children;

<sup>443</sup> Article 62(2)(b) L 4375/2016.

<sup>444</sup> Article 62(6) L 4375/2016.

<sup>445</sup> Article 104(2)(d) IPA, citing Article 83(9)(h) IPA.

<sup>446</sup> Article 5(7)(a)-(b) L 4375/2016, as amended by Article 116(7) IPA.

victims of torture, rape or other serious forms of psychological, physical or sexual violence or exploitation; persons with a post-traumatic disorder, in particularly survivors and relatives of victims of ship-wrecks; victims of human trafficking. Some aspects of this definition, namely as regards persons with post-traumatic stress disorder (PTSD) have been debated due to the [Special Procedural Guarantees](#) offered in the context of the [Fast-Track Border Procedure](#).<sup>447</sup>

In the context of reception conditions, Article 20 L 4540/2018 indicatively introduces more categories of **vulnerable applicants** such as persons with mental disorders and victims of female genital mutilation. However, persons with PTSD are not expressly mentioned in this list. Article 23 L 4540/2018 has also amended the procedure for certifying persons subject to torture, rape or other serious forms of violence (see [Use of Medical Reports](#)).

According to L 4375/2016, whether an applicant is in **need of special procedural guarantees** is for the Asylum Service to assess “within a reasonable period of time after an application for international protection is made, or at any point of the procedure the relevant need arises, whether the applicant is in need of special procedural guarantees” which is in particular the case “when there are indications or claims that he or she is a victim of torture, rape or other serious forms of psychological, physical or sexual violence.”

The number of asylum seekers registered by the Asylum Service as vulnerable in 2019 is as follows:

Vulnerable persons registered among asylum seekers: 2019		
Category of vulnerability	Applicants	Pending end 2019
Unaccompanied children	3,330	4,084
Persons suffering from disability or a serious or incurable illness	2,294	2,847
Pregnant women / new mothers	1,341	1,697
Single parents with minor children	1,399	1,557
Victims of torture, rape or other serious forms of violence or exploitation	233	365
Elderly persons	228	258
Victims of human trafficking	15	0
Minors accompanied by members of extended family	63	93
<b>Total</b>	<b>8,903</b>	<b>10,901</b>

Source: Asylum Service, 17 February 2020. Overlap in some cases is due to applicants falling in multiple vulnerability categories. The numbers refer to cases classified under these categories at the time of registration and not to the number of cases in which the vulnerability arose on a later stage.

The number and type of decisions taken at first instance on cases by vulnerable applicants are as follows:

First instance decisions on applications by vulnerable persons: 2019			
Category	Refugee status	Subsidiary protection	Rejection
Unaccompanied children	381	131	566
Persons suffering from disability or a serious or incurable illness	234	36	388
Pregnant women / new mothers	250	31	98
Single parents with minor children	169	25	41

<sup>447</sup> See General Commission of Administrative Courts, 'Proposals regarding the acceleration of the asylum procedure', 14 November 2017, available in Greek at: <http://bit.ly/2rYpmpk>; ECRE, 'Greek judges recommend legal restrictions to accelerate procedure on the islands', 24 November 2017, <http://bit.ly/2hRbIC3>.

Victims of torture, rape or other serious forms of violence or exploitation	118	4	19
Elderly persons	19	8	3
Victims of human trafficking	0	0	0
Minors accompanied by members of extended family	47	5	6

Source: Asylum Service, 17 February 2020.

The IPA has made significant amendments to the definition of vulnerable persons and persons in need of special procedural guarantees.

According to Articles 39(5)(d) and 58(1) IPA relating to reception and identification procedures and **reception of asylum seekers** 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. Persons with a post-traumatic disorder have been deleted as category of persons belonging to vulnerable groups.

### 1.1. Screening of vulnerability

According to Article 39(5) of the new IPA, in the context of reception and identification procedures carried out by the RIS, “The Manager of [RIC] or the Unit, acting on a motivated proposal of the Head of the medical screening and psychosocial support unit shall refer persons belonging to vulnerable groups to the competent social support and protection institution. A copy of the medical screening and psychosocial support file shall be sent to the Head of the institution, as per case, where the person is being referred to or resides. In all cases the continuity of the medical treatment followed shall be ensured, where necessary.”<sup>448</sup>

#### 1.1.1. Vulnerability identification on the islands

The identification of vulnerability of persons arriving on the islands takes place either by the RIS prior to the registration of the asylum application or during the asylum procedure in the context of the [Fast-Track Border Procedure](#).

#### Vulnerability identification by the RIS

Since mid-2017 until March 2019 medical screening and psycho-social assessment within the framework of reception and identification procedures had been undertaken by the Centre of Disease Control and Prevention (KEELPNO), a public entity under the Ministry of Health. During this period, due to the fact that KEELPNO units at the RIC remained significantly understaffed (see [Health Care](#)), major delays occurred in the identification of the vulnerabilities of newly arrived persons in all of the islands. As noted by FRA:

<sup>448</sup> Until the end of 2019 Article 14(8) L 4375/2016 was applicable. It provided that “Law 4375/2016 (applicable until the end of 2019) provided that: “The Manager of [RIC] or the Unit, acting on a proposal of the Head of the medical screening and psychosocial support unit shall refer persons belonging to vulnerable groups to the competent social support and protection institution. A copy of the medical screening and psychosocial support file shall be sent to the Head of the Open Temporary Reception or Accommodation Structure or competent social support and protection institution, as per case, where the person is being referred to. In all cases the continuity of the medical treatment followed shall be ensured, where necessary.”

“The time it takes to assess if a person is or is not vulnerable under Greek law varies considerably depending on the number of new arrivals, but also on the availability of professionals and interpreters. Insufficient number of doctors, psychologists (but also lack of space for them to have confidential interviews and examinations) as well as significant delays in recruiting interpreters limit the impact of these measures, leading to months of delays in some hotspots.”<sup>449</sup>

According to RSA-Pro Asyl “The Comprehensive Emergency Health Response to Refugee Crisis” aka PHILOS project was engineered in order to support Greece’s public health system structures that mostly undertook the burden of the refugee crisis as well as provide primary healthcare and mental health support services within camps in the mainland and Reception and Identification Centres (RICs) on the islands [...]. From early on the project’s capacity in deploying personnel has been seriously hampered mostly by the unattractive compensation scheme KEELPNO was able to offer to doctors and nurses, as well as auxiliary staff due to financial as well as bureaucratic constraints. Throughout the implementation of the first phase of the project, KEELPNO made repeated efforts to hire more people while the dropout rate was also significant. Implementation suffered constant gaps with the project not managing to deploy the entire human resources planned”.<sup>450</sup>

KEELPNO was abolished by the L 4600/2019. Further EODY (National Public Health Organization) was established by the L 4633/2019 as the successor of KEELPNO.

The process though, by which vulnerability assessments were conducted remained indeed a source of serious concern in 2019. “NGOs working on the ground and human rights groups have raised concerns regarding the significant delays to vulnerability assessments due to a lack of staff and expertise”.<sup>451</sup>

UNHCR reported that “EODY’s medical teams remain understaffed across the islands widening the gap in the process of medical registration, vulnerability assessment as well as primary and mental healthcare”.<sup>452</sup>

In 2019 the average time between the arrival of the persons and the completion of the medical/psychosocial examination/ vulnerability assessment on the Aegean islands is as follows:

Location	Average time between the arrival of the person and the completion of the medical/psychosocial examination/ vulnerability assessment
RIC Lesvos	2-6 months
RIC Chios	1-8 months
RIC Samos	2-3 months
RIC Leros	3-4 months
RIC Kos	4 months

Information provided by the Ministry for Migration and Asylum, Special Secretariat for Reception, 6 February 2020.

The time elapsing between arrival and completion of the medical/psychosocial examination/ vulnerability assessment depends on the availability of qualified staff. As noted by the Authorities “on Chios RIC there

<sup>449</sup> FRA, *Update of the 2016 FRA Opinion on fundamental rights in the hotspots set up in Greece and Italy*, 4 March 2019, 46-47.

<sup>450</sup> RSA-PRO ASYL, *STRUCTURAL FAILURE: Why Greece’s reception system failed to provide durable solutions*, June 2019, Response by the International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) to the Observations of the Greek Government on the Merits of Collective Complaint 173/2018, November 2019, available at: <https://bit.ly/2YdqNie>.

<sup>451</sup> No end in sight, *The mistreatment of asylum seekers in Greece*, August 2019, available at: <https://bit.ly/2y52GaH>.

<sup>452</sup> UNHCR, *Factsheet: Greece*, 1 -31 August 2019, available at: <https://bit.ly/3cTpokL>.

were no medical services for the identification of the vulnerability between January and April 2019 and in December 2019. In Leros RIC there was a gap during November and December 2019. In Lesbos, [there was a gap in the provision of services] between May and September 2019 [...] In Samos, there was a gap between May and September 2019. During these periods there was a collaboration with local hospitals and the EODY units”.<sup>453</sup>

According to findings of the GCR, the delays and at times dysfunctional identification processes in 2019 resulted in a considerable number of asylum procedures being initiated without the applicants' vulnerability having been assessed. In sum, this pointed to “a systematic failure in the identification and protection of vulnerable people particularly on the islands”.<sup>454</sup> In particular, UNHCR<sup>455</sup> commented on the persisting overcrowding noting that “Keeping people on the islands in these inadequate and insecure conditions is inhumane”, while the Council of Europe Commissioner for Human Rights inter alia, concluded that “The situation of migrants, including asylum seekers, in the Greek Aegean islands has dramatically worsened over the past 12 months. Urgent measures are needed to address the desperate conditions in which thousands of human beings are living [...] It is an explosive situation [...] This no longer has anything to do with the reception of asylum seekers. This has become a struggle for survival. [...] Praising the strength of the asylum seekers and the solidarity of humanitarian staff and local communities who are trying to bring some measure of dignity to the camps, the Commissioner calls on the Greek authorities to take urgent measures to meet the vital needs of all these people and safeguard their human rights. If not urgently and adequately addressed, these abysmal conditions, combined with existing tensions, risk leading to further tragic event”.<sup>456</sup>

Until now, “alarming reports indicate that vulnerabilities are often missed, with individuals going through the asylum procedure without having their vulnerability assessment completed first”.<sup>457</sup>

**Lesvos:** GCR has observed vulnerability assessments taking place between a period varying from a few days to 6 months from the arrival of the person depending on the availability of staff, including interpreters, and the number of arrivals. During a period from 20 May 2019 until 15 September 2019, the psychosocial division of RIS in Lesbos has halted its operation. Likewise, the medical division has halted its operation from time to time. However, even after falling back to normal operation the Division had to deal with a huge backlog of cases and newcomers still faced severe delays in being screened or had never been screened by the Psychosocial division whatsoever. Upon request, EODY (ex KEELPNO) accepted to reintroduce or assess cases in its Division for vulnerability assessment, when the individuals involved have been registered by EODY during the period that the psychosocial division of KEELPNO had halted its operation. Due to these shortcomings, a considerable number of newcomers and asylum seekers had never been (properly) assessed regarding potential vulnerabilities. As a result, undetected vulnerable asylum seekers had not been examined under the Regular Procedure the as Law provides, nor they did they have their geographical restriction lifted.

**Chios:** Since the Medical and Psychosocial Division of RIS remained significantly understaffed, major delays occurred throughout 2019 in the identification of vulnerabilities. No doctor was present in the RIC since August 2018 and thus the identification of vulnerabilities has been halted for a significant period of

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<sup>453</sup> Information provided by the Ministry for Migration and Asylum, Special Secretariat for Reception, 6 February 2020.

<sup>454</sup> Council of Europe, *Report of the Commissioner for Human Rights of the Council of Europe Dunja Mijatović following her visit to Greece from 25 to 29 June 2018*, CommDH(2018)24, 6 November 2018, available at: <https://bit.ly/2lwG4EG>, para 46.

<sup>455</sup> UNHCR, Greece must act to end dangerous overcrowding in island reception centres, EU support crucial, 1 October 2019, available at: <https://bit.ly/2W86Lmz>.

<sup>456</sup> Council of Europe, Commissioner for Human Rights, Greece must urgently transfer asylum seekers from the Aegean islands and improve living conditions in reception facilities, 31 October 2019, available at: <https://bit.ly/2SdBgpM>; Response by the International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) to the Observations of the Greek Government on the Merits of Collective Complaint 173/2018, November 2019, available at: <https://bit.ly/3bN30cW>.

<sup>457</sup> No end in sight, The mistreatment of asylum seekers in Greece, August 2019.

time or was done by two nurses. The President of KEELPNO who was visiting the island from time to time signed the relevant document, upon his visits. In April 2019 a doctor was hired and since June 2019 the medical screening was taking place but still with big delays. Concerning the psycho-social assessment, it was not offered to all newly arrived persons registered by the RIC, but only following a relevant request of the applicant or a referral by the competent RAO, or civil society organisations. Furthermore, the contracts of the employees of the psychosocial division of the RIS (i.e. social workers, psychologists, etc) expired in April 2019 (except one psychologist) and were renewed in the beginning of September 2019. As a result, psychologists and social workers of KEELPNO had to deal with a big backlog of cases requesting for psychosocial support and examination. Therefore, despite the relevant provision of the law, many third country nationals did not have access to psychosocial screening and support inside the RIC. As a result, vulnerable people were -in many cases- not identified as such and they were not referred in the Regular Procedure neither was the geographical restriction imposed to them lifted.

**Samos:** Shortcomings related to understaffing, temporary interruption of the operation of medical and/or psychosocial division of the RIC and delays mentioned above, apply also for Samos. The average period for a vulnerability assessment was 2-3 months<sup>458</sup>. However, due to lack of doctors GCR observed that in some cases the vulnerability assessments took place nine months after their arrival.

**Leros:** The average period for vulnerability assessment by the psychosocial unit was about 4 months. Due to lack of interpreters and/or doctors, vulnerability assessments had been halted from time to time during 2019. This resulted in the problems and shortcomings underlined above.

**Kos:** Shortcomings related to understaffing and delays mentioned above, also apply for the medical and psychosocial division of RIS in Kos. The average period in which the vulnerability assessments for the persons in special needs took place was 4 months.<sup>459</sup>

Beyond delays, the following issues exacerbate problems in the identification of vulnerabilities:

- **Provision of the vulnerability assessment upon request:** Despite the relevant provision in national law which states that all newly arrived persons should be subject to reception and identification procedures, including medical screening and psychosocial assessment, during 2019 it has been reported that a psychosocial assessment is not offered to all newly arrived persons registered by the RIS. In fact, in some cases a relevant request of the applicant or a referral by the competent RAO, Health Unit SA (*Ανώνυμη Εταιρεία Μονάδων Υγείας*, AEMY), or civil society organisations needed to be made. This practice has been mainly observed during 2019 on **Lesvos** and **Samos and Chios**. As far as detainees are concerned, in **Lesvos** no person was detained unless a medical screening had been conducted. However, detainees did not have access to psychosocial screening. Similarly, in **Kos** detainees, who were detained upon arrival in the scope of the so called 'Pilot Project', had no access to medical and psychosocial screening.
- **"High", "medium" and "no" vulnerability:** As of the end of 2017 and early 2018, a new medical vulnerability template, entitled "Form for the medical and psychosocial evaluation of vulnerability", has been adopted by KEELPNO.<sup>460</sup> This template introduces two levels of vulnerability: (A) Medium vulnerability, which could develop if no precautionary measures are introduced and (B) High vulnerability, when the occurrence of vulnerability is obvious and the continuation of the evaluation and the adoption of a care plan are recommended. Further referral is needed for immediate support. The classification of a case as "medium" or "high" vulnerability is decided by the medical unit (KEELPNO) of each RIC on the islands. Since September 2018 the vulnerability

<sup>458</sup> Information provided by the Ministry of Migration and Asylum, 7 February 2020.

<sup>459</sup> Information provided by the Ministry of Migration and Asylum, 7 February 2020.

<sup>460</sup> European Commission, *Progress report on the Joint Action Plan on the implementation of the EU-Turkey statement*, Annex 2, COM(2017) 669, 15 November 2017.

template has been further amended to set out three relevant indicators to be used by the medical unit of each RIC: “(A) High vulnerability”, “(B) Medium vulnerability” and “(C) No vulnerability”.

Even if the distinction between “A” and “B” vulnerability concerns the medical terminology used and the support that the person should receive, in practice this vulnerability assessment procedure is used in a way which underestimates vulnerabilities classified as “B”, despite the fact that such a distinction is not provided by law. In practice it is only applicants who have been identified with a “A” vulnerability whose case is exempted from the Fast Track Border Procedure and the geographical limitation is lifted. Moreover, given the backlog of cases and the shortage of medical staff, further assessment of persons who have been identified with “B” vulnerabilities is particularly difficult. A considerable number of vulnerable applicants are not identified as such.

- **Lack of information on the outcome of the procedure:** Since the end of 2018, applicants are not informed of the outcome of the vulnerability assessment and are not provided with a copy of the vulnerability assessment template. The RIS informs directly the Asylum Service of the outcome of the assessment. The applicant is informed only if he or she has been identified as having “high vulnerability”, in which case his or her geographical restriction will be lifted (see [Freedom of Movement](#)).

The RIS and the Asylum Service generally follow the assessment made by medical experts and the psychosocial unit of the KEELPNO/EODY. However, according to GCR observations from **Samos** and **Chios** during 2019, in some cases the Head of the RIC refers back to the medical unit or does not approve the vulnerability assessment of KEELPNO/ EODY, even though the Head of the RIC is not competent to do so.

### Vulnerability identification in the asylum procedure

L 4375/2016, as amended in May 2018, provides that if the fast-track border procedure is applied, the competent RAO or AAU of the Asylum Service can refer the applicant to the medical and psychosocial unit of the RIC for vulnerability to be assessed at any point of the procedure.<sup>461</sup> Despite these provisions, the shortage of medical and psychosocial care can make it extremely complicated and sometimes impossible for people seeking asylum to be re-assessed during that process.<sup>462</sup> Following the medical and psychosocial assessment the medical psychosocial unit of the RIC informs the competent RAO or AAU of the Asylum Service.<sup>463</sup>

Accordingly, where vulnerability is not identified prior to the asylum procedure the initiation of a vulnerability assessment lies to a great extent at the discretion of the caseworker. As mentioned above, due to significant gaps in the provision of reception and identification procedures in 2019, owing to a significant understaffing of KEELPNO/EODY units, GCR has found that for a considerable number of applicants the asylum procedure was initiated without their medical and psychosocial assessment having been concluded.

As a result, indications of vulnerability have often surfaced during admissibility interviews conducted by EASO staff, who *de facto* play a crucial role in identifying and determining vulnerability and therefore the provision of [Special Procedural Guarantees](#). As far as GCR is aware, however, since the end of 2018 EASO caseworkers did not proceed with the first instance interview in case the applicant had not undergone at least a medical assessment by the medical unit of RIS, among others for their own health and safety. In these cases, they postponed the interview.<sup>464</sup>

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<sup>461</sup> Article 53 L 4375/2016, as amended by Article 28(10) L 4540/2018, see also Article 72(3) IPA.

<sup>462</sup> Oxfam, *Vulnerable and abandoned*, January 2019.

<sup>463</sup> Article 53 L 4375/2016, as amended by Article 28(10) L 4540/2018, see also Article 72(3) IPA.

<sup>464</sup> See also FRA, *Update of the 2016 FRA Opinion on fundamental rights in the hotspots set up in Greece and Italy*, 4 March 2019, 26.



When vulnerability was not identified in the reception and identification procedure but during registration of the asylum application or the interview,

- the EASO caseworker (in case the procedure was conducted by an EASO-caseworker), was required to refer the case to an EASO vulnerability expert, who drafted an opinion.
- the Asylum Service caseworker (If the procedure was conducted by an Asylum Service caseworker), referred the case to the vulnerability identification procedures conducted by the RIS, or assessed the vulnerability by his or her own means.<sup>465</sup>

Since July 2019, where vulnerability was only identified by the EASO Caseworker during the interview, no interruption was ordered. The caseworker would continue and complete the interview, and then transmit any information on vulnerability together with the rest of the file to the Asylum Service. Accordingly, EASO did no longer conduct vulnerability assessments and issue vulnerability opinions.<sup>466</sup>

In 2019, EASO made available 10 vulnerability experts on the islands.<sup>467</sup>

The vulnerability assessment and drafting of an opinion by an EASO vulnerability expert were not clearly set out in any provision of Greek law,<sup>468</sup> but by EASO's internal Standard Operating Procedures, which as reported left the assessment of vulnerability to the discretion of the EASO staff.<sup>469</sup> It is not clear whether such assessments took into consideration the relevant provisions and safeguards under national law.<sup>470</sup>

In addition, the professional background and the level of expertise of EASO vulnerability experts deployed in Greece is not known, while concerns have been raised as to the feasibility of thorough investigations on asylum seekers' vulnerabilities in the context of the [Fast-Track Border Procedure](#) and as to whether vulnerability indications and/or relevant allegations of the applicant are properly assessed.<sup>471</sup> As reported in the past, in some cases "strong indications of vulnerability have been ignored" in interviews conducted by EASO.<sup>472</sup> Moreover, the ECCHR also stated: "Concretely, EASO officers often stuck to a rigid questionnaire without giving the applicant room to elaborate on their personal history of harm or persecution. Interviews consisted of an overwhelming number of closed questions, the inappropriate use of suggestive questions, and were marked by a failure to ask follow-up concerning vulnerability. Moreover, EASO officers failed to give applicants the opportunity to clarify inconsistencies between their statements and information from other sources. Yet, these inconsistencies were systematically highlighted in EASO's concluding remarks to refute the applicant's account. In the most severe cases, the concluding remarks did not include crucial information on vulnerability expressly raised by the applicant".<sup>473</sup>

Finally, the vulnerability expert has no direct access to the applicant. The vulnerability assessment only takes place on the basis of the documents on the file of the applicant.

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<sup>465</sup> See Article 72(3) IPA

<sup>466</sup> ECRE, *The role of EASO operations in National Asylum Systems*, November 2019, available at: <https://bit.ly/2Yb9OwQ>. Information provided by the Asylum Service, 17 February 2020.

<sup>467</sup> Information provided by the Asylum Service, 17 February 2020.

<sup>468</sup> Article 60(4)(b) L 4375/2016 provides that EASO staff may conduct a personal interview, but does not mention vulnerability assessments, see also 90(3)(b) IPA.

<sup>469</sup> Greens/EFA, *The EU-Turkey Statement and the Greek Hotspots: A failed European Pilot Project in Refugee Policy*, June 2018, 19.

<sup>470</sup> Article 14(8) L 4375/2016.

<sup>471</sup> AIDA, *The concept of vulnerability in European asylum procedures*, September 2017, 30; ECCHR, *Case report Greece: EASO's influence on inadmissibility decisions exceeds the Agency's competence and disregards fundamental rights*, April 2017, available at: <http://bit.ly/2uhlhZF>.

<sup>472</sup> AIDA, *The concept of vulnerability in European asylum procedures*, September 2017, 30; Ombudsman, *Migration flows and refugee protection: Administrative challenges and human rights*, Special Report 2017, 31.

<sup>473</sup> European Centre for Constitutional and Human Rights, *EASO's involvement in Greek Hotspots exceeds the agency's competence and disregards fundamental rights*, April 2019, available at: <https://bit.ly/2VILjFL>.

### 1.1.2. Vulnerability identification in the mainland

In Attica region, depending on their nationality, vulnerable groups are referred either to the Municipality of Athens Centre for Reception and Solidarity in Frouarchion in cases where the competent RAO is the one of Athens, or in the RAOs of Alimos and Piraeus. In the rest of mainland vulnerable groups are registered by the RAO competent for the area they reside in. No further information was provided by the Asylum Service regarding how many asylum seekers were registered there.

However, obstacles to [Registration](#) through Skype in the mainland also affects vulnerable persons. As referrals of vulnerable persons to Frouarchion in order to be registered is taking place through NGOs or other entities, GCR is aware of cases of vulnerable applicants who before being supported by NGOs or other entities and referred to Frouarchion have repeatedly and unsuccessfully tried to fix an appointment to register their application through Skype. Moreover, appointments for registration in Frouarchion can be delayed due to capacity reasons.

In case that indications or claims as of past persecution or serious harm arise, the Asylum Service refers the applicant for a medical and/or psychosocial examination, which should be conducted free of charge and by specialised scientific personnel of the respective specialisation.<sup>474</sup> Otherwise, the applicant must be informed that he or she may be subject to such examinations at his or her own initiative and expenses. Any results and reports of such examinations must be taken into consideration by the Asylum Service (see [Use of Medical Reports](#)).<sup>475</sup> However, article 72(2) IPA provides that “Any results and reports of such examinations are deemed as justified by the Asylum Service where it is established that the applicant’s allegations of persecution or serious harm are likely to be well-founded”.

Currently, there are no public health structures specialised in identifying or assisting torture survivors in their rehabilitation process. As a result, it is for the NGOs running relative specialised programmes, to handle the identification and rehabilitation of victims of torture. This is rather problematic for reasons that concern the sustainability of the system, as NGOs’ relevant funding is often interrupted.

In **Athens**, torture survivors were referred for identification purposes to [Metadrasi](#), whose service had been interrupted for a substantial period of time due to lack of funding.

## 1.2. Age assessment of unaccompanied children

Ministerial Decision 92490/2013 lays down the age assessment procedure in the context of reception and identification procedures. Moreover, Joint Ministerial Decision 1982/2016 provides for an age assessment procedure for persons seeking international protection before the Asylum Service,<sup>476</sup> as well as persons whose case is still pending before the authorities of the “old procedure”.<sup>477</sup> However, the scope of these decisions does not extend to age assessment of unaccompanied children under the responsibility of the Hellenic Police (see [Detention of Vulnerable Applicants](#)).

### 1.2.1. Age assessment by the RIS

Ministerial Decision 92490/2013 of the Minister of Health established for the first time in Greece an age assessment procedure applicable within the context of the (then) First Reception Service (FRS).<sup>478</sup>

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<sup>474</sup> Article 52 L 4375/2016, see also 72(1) IPA.

<sup>475</sup> Article 53 L 4375/2016.

<sup>476</sup> Joint Ministerial Decision 1982/2016, Gov. Gazette B’335/16-2-2016.

<sup>477</sup> Article 22(A)11 JMD 1982/2016, citing Article 34(1) PD 113/2013 and Article 12(4) PD 114/2010.

<sup>478</sup> Ministerial Decision n. Υ1.Γ.Π.οικ. 92490/2013 “Programme for medical examination, psychosocial diagnosis and support and referral of entering without legal documentation third country nationals, in first reception facilities”.

According to MD 92490/2013, in case where there is specifically justified doubt as to the age of the third-country national, and the person may possibly be a minor, the person is referred to the medical control and psychosocial support team for an age assessment.

1. Initially, the age assessment will be based on macroscopic features (i.e. physical appearance) such as height, weight, body mass index, voice and hair growth, following a clinical examination from a paediatrician, who will consider body-metric data. The paediatrician will justify his or her final estimation based on the aforementioned examination data and observations.
2. In case the person's age cannot be adequately determined through the examination of macroscopic features, an assessment by the psychologist and the social worker of the division will follow in order to evaluate the cognitive, behavioural and psychological development of the individual. The psychosocial divisions' evaluation report will be submitted in writing. Wherever a paediatrician is not available or when the interdisciplinary staff cannot reach any firm conclusions, and only as a measure of last resort, the person will be referred to a public hospital for specialised medical examinations such as dental or wrist X-rays, which will be clearly explained to him or her as far as their aims and means are concerned.

The estimations and the assessment results are delivered to the Head of the medical and psychosocial unit, who recommends to the Head of the RIC the official registration of age, noting also the reasons and the evidence supporting the relevant conclusion. After the age assessment procedure is completed, the individual should be informed in a language he or she understands about the content of the age assessment decision, against which he or she has the right to appeal in accordance with the Code of Administrative Procedure. The appeal has to be submitted to the Secretariat of the RIC within 10 days from the notification of the decision on age assessment. In practice, the 10-day period may pose an insurmountable obstacle to receiving identification documents proving their age, as in many cases persons under an age assessment procedure remain restricted in the RIC. These appeals are in practice examined by the Central RIS. According to the data provided by the RIS, during 2019, 13 appeals were submitted against age assessment decisions and all of them were rejected.<sup>479</sup>

According to GCR findings, in practice, the age assessment of unaccompanied children is an extremely challenging process and the procedure prescribed is not followed in a significant number of cases, *inter alia* due to the lack of qualified staff. During 2019, the practice of not following the prescribed procedure persisted due to lack of specialized personnel.

In **Lesvos**, given the fact that there was no psychosocial unit in the National Public Health Organization (EODY, former KEELPNO - Centre of Disease Control and Prevention) for several months (May to September 2019), it is evident that all the age assessments that took place within that period have bypassed the procedure set by the law. There was a case in late 2019, where the RAO referred the applicant to the EODY for an age assessment. EODY answered that the macroscopic features indicate an adult and that an interview with the psychosocial unit is pending. However, the RAO issued a decision regarding adulthood without a prior examination from psychosocial unit and without following the procedure prescribed by the law. In the end, after the first rejecting decision, the applicant procured an original document from his country of origin, which proved that he was a minor. In general, if a minor is able to procure a document, proving his/her age, this document is submitted in the Asylum Service. However, the RAO does not assign a reference number to the document (which would verify the submission) and just forwards it to FRONTEX to authenticate it. If the document is authentic, the date of birth will be corrected. If not, the document is confiscated and destroyed and there is no appeal procedure.<sup>480</sup>

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<sup>479</sup> Information provided from the RIS, 11 February 2020.

<sup>480</sup> Rosa Luxemburg Foundation, *Children Cast Adrift: Exclusion and exploitation of unaccompanied minors (UAMs) in Greece* (2019), available at: <https://bit.ly/2yR9clg>.

In **Chios**, GCR was aware that there were many problems with the age assessment and it was a challenging procedure. In Samos according to GCR's findings, there had been cases where some of the applicants' personal data, including the age, were registered incorrectly, either by mistake or due to errors in the interpretation by FRONTEX. The procedure for age assessment was slow and once a month, after scheduling an appointment, the applicant could be examined in the General Hospital of Samos in order for his age to be assessed. However, from May 2019 to November 2019, there was no psychologist in the General Hospital of Samos, therefore the procedure was suspended.

The age assessment procedure in the RIC of **Fylakio** is highly problematic.

HumanRights360 reports that in the Fylakio RIC in **Evros**, the age assessment process continued to be challenging since almost all cases were referred for X-ray without any contact with the individual in question. Most of the time, the only criteria used in order to refer a child to the age assessment procedure was the personal and –in most cases- arbitrary decision of the Reception and Identification Service (RIS) officers, who determine age either by assessing the individual's visual appearance in person or their registration photo. There is typically a large margin of doubt and in the majority of cases (more than 50%), the individual was not assessed to be a minor. The referral to the age assessment procedure occurred even in specific cases where the person held a copy or carried a picture of an original document on their phone that proved them to be underage. HumanRights360 filed an appeal against an age assessment decision, which deemed the applicant to be an adult, therefore he was referred to a pre-removal centre. After the person's registration with the RAO of Fylakio, HumanRights360 presented his original birth certificate and succeeded in getting an order from the Prosecutor to transfer the child back to protective custody.<sup>481</sup>

Moreover, UNHCR has also observed gaps in the age registration procedure followed by the police and Frontex as well as in the referrals to the age assessment procedure, which is applied contrary to the provisions provided in Greek law. The latter foresees a step-by-step and holistic assessment by the medical and psychosocial support unit in the RIC defining the referral to the hospital as the last resort and only if the medical and psychosocial assessment of the RIS is not conclusive. However, in practice, the medical and psychosocial assessment in the scope of the RIS is skipped and a referral takes place directly to the hospital for an x-ray assessment, which usually concludes the age assessment procedure. Furthermore, issues of concern are the gaps in the age assessment procedures that result in instances of repeated age assessments requested by different actors, a practice that prolongs the stay of unaccompanied children in dire conditions in RICs.<sup>482</sup>

### 1.2.2. Age assessment in the asylum procedure

The IPA includes procedural safeguards and refers explicitly to the JMD 1982/2016 regarding the age assessment procedure. More specifically, Article 75(3) IPA provides that "The competent receiving authorities may, when in doubt, refer unaccompanied minors for age determination examinations according to the provisions of the Joint Ministerial Decision 1982/16.2.2016 (O.G. B' 335). When such a referral for age determination examinations is considered necessary and throughout this procedure, attention shall be given to the respect of gender-related special characteristics and of cultural particularities."

The provision also sets out guarantees during the procedure:

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<sup>481</sup> Humanrights360, *No end in sight – The mistreatment of asylum seekers in Greece*, (2019), available at: <https://bit.ly/2YauWmY>.

<sup>482</sup> Submission by the Office of the United Nations High Commissioner for Refugees in the case of International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece (Complaint No. 173/2018) before the European Committee of Social Rights.

- (a) A guardian for the child is appointed who shall undertake all necessary action in order to protect the rights and the best interests of the child, throughout the age determination procedure;
- (b) Unaccompanied children are informed prior to the examination of their application and in a language which they understand, of the possibility and the procedures to determine their age, of the methods used therefore, the possible consequences of the results of the above mentioned age determination procedures for the examination of the application for international protection, as well as the consequences of their refusal to undergo this examination;
- (c) Unaccompanied children or their guardians consent to carry out the procedure for the determination of the age of the children concerned;
- (d) The decision to reject an application of an unaccompanied child who refused to undergo this age determination procedure shall not be based solely on that refusal; and
- (e) Until the completion of the age determination procedure, the person who claims to be a minor shall be treated as such.

The law also states that “the year of birth can be modified after the age determination procedure under Article 75, unless during the interview it appears that the applicant who is registered as an adult is manifestly a minor; in such cases, a decision of the Head of the competent Receiving Authority, following a recommendation by the case-handler, shall suffice.”<sup>483</sup>

Regarding the age assessment procedure *per se*, the JMD 1982/2016 provides that:

- ❖ In case of doubt during the asylum procedure, the competent officer informs the Head of the RAO, who shall issue a decision specifically justifying such doubt in order to refer the applicant to a public health institution or an entity regulated by the Ministry of Health, where a paediatrician and psychologist are employed and a social service operates;<sup>484</sup>
- ❖ The age assessment is conducted with the following successive methods: based on the macroscopic characteristics, such as height, weight, body mass index, voice and hair growth, following a clinical examination from a paediatrician, who will consider body-metric data. The clinical examination must be carried out with due respect of the person's dignity, and take into account deviations and variations relating to cultural and racial elements and living conditions that may affect the individual's development. The paediatrician shall justify his or her final estimation based on the aforementioned examination data;<sup>485</sup>
- ❖ In case the person's age cannot be adequately determined through the examination of macroscopic features, following certification by the paediatrician, an assessment by the psychologist and the social worker of the structure of the entity will follow in order to evaluate the cognitive, behavioural and psychological development of the individual and a relevant report will be drafted by them. This procedure will take place in a language understood by the applicant, with the assistance of an interpreter, if needed.<sup>486</sup> If no psychologist is employed or there is no functioning social service in the public health institution, this assessment may be conducted by a psychologist and a social worker available from civil society organisations;<sup>487</sup>
- ❖ Wherever a conclusion cannot be reached after the conduct of the above procedure, the following medical examinations will be conducted: left wrist and hand X-rays for the assessment of the skeletal mass, dental examination and panoramic dental X- rays.<sup>488</sup> The opinions and evaluation

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<sup>483</sup> Article 79(4) IPA.

<sup>484</sup> Article 2 JMD 1982/2016.

<sup>485</sup> Article 3 JMD 1982/2016.

<sup>486</sup> Article 4 JMD 1982/2016.

<sup>487</sup> Article 5 JMD 1982/2016.

<sup>488</sup> Article 6 JMD 1982/2016.

results are delivered to the Head of the RAO, who issues a relevant act to adopt their conclusions.<sup>489</sup>

The JMD was an anticipated legal instrument, filling the gap of dedicated age assessment procedures within the context of the Asylum Service and limiting the use of medical examinations to a last resort while prioritising alternative means of assessment. Multiple safeguards prescribed in both the Law, the IPA and JMD 1982/2016 regulate the context of the procedure sufficiently, while explicitly providing the possibility of remaining doubts and thus providing the applicant with the benefit of the doubt even after the conclusion of the procedure. However, the lack of an effective guardianship system also hinders the enjoyment of procedural rights guaranteed by national legislation (see [Legal Representation of Unaccompanied Children](#)).

In practice, the lack of qualified staff within the reception and identification procedure and shortcomings in the age assessment procedure in the RIC undoubtedly have spill-over effect on the asylum procedure, as the issuance of an age determination act by the RIS precedes the registration of the asylum application with the Asylum Service. While registration of date of birth by the Hellenic Police could be corrected by merely stating the correct date before the Asylum Service, this is not the case for individuals whose age has been wrongly assessed by the RIS. In this case, in order for the personal data e.g. age of the person to be corrected, the original travel document, or identity card should be submitted. Additionally, a birth certificate or family status can be submitted, however, these two documents require an “apostille” stamp,<sup>490</sup> which in practice is not always possible for an asylum seeker to obtain. In practice though, in a few cases the employees in the RAOs proceed to the correction of the age of the person, based on documents without “apostille”. Alternatively, according to the law, the caseworker of the Asylum Service can refer the applicant to the age assessment determination procedure in case that reasonable doubt exists as to his or her age.<sup>491</sup> In this case, referral to the age assessment procedure largely lies at the discretion of the Asylum Service caseworker.

The number of age assessments conducted within the framework of the asylum procedure in 2019 is not available.

In light of the persisting gaps on the child protection in Greece, including the lack of effective guardianship, lack of qualified staff for age assessment procedures, inconsistencies in the procedure followed and the lack of any legal framework governing the age assessments conducted by the Police (see [Detention of Vulnerable Applicants](#)) the 2017 findings of the Ombudsman are still valid: “The verification of age appears to still be based mainly on the medical assessment carried out at the hospitals, according to a standard method that includes x-ray and dental examination, while the clinical assessment of the anthropometric figures and the psychosocial assessment is either absent or limited. This makes more difficult the further verification of the scientific correctness of the assessment.”<sup>492</sup>

Moreover, in the past the Ombudsman had expressed serious doubts as to the proper and systematic implementation of the age assessment procedures provided by both ministerial decisions and the implementation of a reliable system.<sup>493</sup> On 30 August 2018 the Greek Ombudsman had sent a letter to the Director of the Asylum Service on issues that hinder access to the asylum procedure for the unaccompanied minors as well as other issues, such as delays, erroneous implementation of the age assessment procedure etc. This document remained answered, thus the Ombudsman sent a kind reminder on 30 September 2019, emphasizing that age assessments based on diagnostic examinations

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<sup>489</sup> Article 7 JMD 1982/2016.

<sup>490</sup> Decision of the Director of the Asylum Service No 3153, Gov. Gazette B' 310/02.02.2018.

<sup>491</sup> Article 75(3) IPA.

<sup>492</sup> Ombudsman, *Migration flows and refugee protection: Administrative challenges and human rights*, Special Report 2017, 25-25 and 75.

<sup>493</sup> *Ibid*, 25.

(such a wrist X-ray scan) should not be accepted given the fact that the accuracy of these exams is questionable.

## 2. Special procedural guarantees

### Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people?

Yes     For certain categories     No

❖ If for certain categories, specify which:

### 2.1. Adequate support during the interview

According to L. 4375/2016 and IPA applicants in need of special procedural guarantees should be provided with adequate support in order to be in the position to benefit from the rights and comply with the obligations in the framework of the asylum procedure.<sup>494</sup>

IPA provides examples of forms of adequate support that can be granted in the procedure. More specifically:<sup>495</sup>

- The possibility of additional breaks during the personal interview;
- The possibility for the applicant to move during the interview if his or her health condition so requires;
- Leniency to minor inconsistencies and contradictions, to the extent that they relate to the applicant's health condition.

National legislation expressively provides that each caseworker conducting an asylum interview shall be "trained in particular as of the special needs of women, children and victims of violence and torture."<sup>496</sup>

As stated in [Number of Staff of the First Instance Authority](#), specific training for handling vulnerable cases is provided to all Asylum Service caseworkers. In addition, EASO deployed 10 vulnerability experts in the context of the [Fast-Track Border Procedure](#).<sup>497</sup>

The law also provides that, when a woman is being interviewed, the interviewer, as well as the interpreter, should also be female where this has been expressly requested by the applicant.<sup>498</sup>

In practice, GCR is aware of cases where the vulnerability or particular circumstances of the applicant have not been taken into account or have not properly been assessed at first and second instance. Examples include the following:

#### Victims of torture and other forms of violence:

- ❖ In a case of a man, national of Cameroon, victim of torture, the first instance decision was full of contradictions and his serious psychological problems were not taken into account by the caseworker. In fact, failing to properly evaluate his medical problems, it was stated that "he was not considered credible since the descriptions he gave were considered insufficiently detailed". Supported by GCR after the first instance decision, he was referred to Metadrasí for identification

<sup>494</sup> Article 50 L.4375/2016 and Article 67 IPA.

<sup>495</sup> Article 67(2) IPA.

<sup>496</sup> Article 52(13)(a) L 4375/2016, see also 77(12)(a) IPA.

<sup>497</sup> Information provided by the Asylum Service, 17 February 2020.

<sup>498</sup> Article 52(6) L 4375/2016, see also 77(5) IPA, as well as Administrative Court of Appeal of Athens, Decision 3043/2018, available in Greek at: <https://bit.ly/2Jk1Bk6>, which found that an applicant who has not requested an interpreter of the same gender for the interview cannot rely on this provision at a later stage.

purposes and got the certificate which was submitted along with his appeal. The case is pending before the Appeals Committee.<sup>499</sup>

- ❖ In a case of a Nigerian woman, although the caseworker accepted her allegation concerning being a victim of human trafficking, she was rejected at first instance on the grounds that “*now she has no contact with the traffickers, she changed her phone number*”. The decision did not detect that the violence she was subjected to amounted to persecution.<sup>500</sup> The case is pending before the Administrative Court of Appeal.
- ❖ In a case of a Cameroonian woman, victim of rape after which she gave birth to a child, the Appeals Committee accepted that she was SGBV victim but rejected her application for international protection. The rejected applicant has been referred to the competent authorities in order to be assessed whether she could be granted with humanitarian protection given that “*she just gave birth, she is vulnerable and she is a rape victim*”.<sup>501</sup> The case is pending before the Administrative Court of Appeals with the support of GCR.

### **Best interests of the child evaluation in asylum claims:**

- ❖ In a case of an unaccompanied minor from Afghanistan, the case worker gave the minor the benefit of the doubt and all his claims regarding persecution have been accepted as founded. However, a refugee status has not been granted to him on the grounds that according to the case worker ‘there is no reasonable possibility to be exposed in danger if he returns to his country of origin’. The caseworker then proceeded to assess the need of granting the minor with subsidiary protection, only to conclude that even though, according to his findings a) there is Taliban presence in the Balkh province, b) explosions from IEDs occur regularly, c) only 15% of the population lives above the poverty line and d) the minor will face problems in covering his basic needs, he does not qualify for subsidiary protection.
- ❖ In another case of an unaccompanied minor from Guinea where there were reasons of persecution based on his ethnic group and political action, the caseworker rejected the claims and did not even give the minor the benefit of the doubt. Moreover even though there were indications of forced labour and domestic violence, the caseworker argued that the condition described “*was not that unbearable for a minor*”. Both cases are pending before the Appeals Authority.<sup>502</sup>

According to GCR’s experience, in several cases, when evaluating claims made by persons of a particular nationality - mainly Pakistani – the caseworkers and the Appeals Committee seem to discriminate and minors are not given the benefit of the doubt. All decisions rejecting minors’ claims have troubling similarities. Procedural deficits (absence of a guardian, of appropriate legal representation and of legal aid during the process), as well as substantial deficits regarding the determination of refugee status (lack of any reference to the Best Interest of the Child or lack of assessment of the Best Interest, obvious lack of knowledge regarding forms of child persecution in general and in countries of origin in particular or the lack of a proper assessment of a minor’s credibility) make it almost impossible for unaccompanied minors undergoing the procedure themselves to qualify for international protection, with the sole exception of children of Syrian nationality.<sup>503</sup> This is reflected on the official statistics provided from the Asylum Service. According to the data provided, during 2019 there were only 381 decisions granting refugee status to

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<sup>499</sup> Decision on file with the author.

<sup>500</sup> *Ibid.*

<sup>501</sup> *Ibid.*

<sup>502</sup> Cases supported by GCR.

<sup>503</sup> Rosa Luxemburg Foundation, *Children Cast Adrift: Exclusion and exploitation of unaccompanied minors (UAMs) in Greece* (2019), available at: <https://bit.ly/35b4jjn>.



unaccompanied minors and 131 granting subsidiary protection, whereas there were 556 rejecting decisions. There are still 4,084 pending decisions for UACs.<sup>504</sup>

## 2.2. Exemption from special procedures

L 4375/2016 expressly foresaw that applicants in need of special procedural guarantees shall always be examined under the regular procedure.<sup>505</sup> Since the entry into force of the IPA this guarantee has been abolished.

Newly arrived applicants who fall within the family provisions of the Dublin Regulation or who are considered vulnerable, according to the definition in Article 14(8) L 4375 (see [Identification](#)) are exempted from the [Fast-Track Border Procedure](#) and their claims are considered admissible.

In 2019, 25,967 applications were exempted from the fast-track border procedure and channeled into the regular procedure for reasons of vulnerability. These include 1,524 applications by unaccompanied children, while the specific vulnerabilities presented by the rest of the cases are not available.<sup>506</sup> In the first half of 2019, EASO recommended the referral of the applicant to the regular procedure on grounds of vulnerability in 1,212 cases. Before July 2019, if vulnerability had not been identified during the reception and identification procedure and was only raised during the interview with EASO, the caseworker would interrupt the interview and complete a form of Initial Identification of Special Needs (“Annex I”). Subsequently, the caseworker would refer the case to an EASO Vulnerability Expert to conduct a vulnerability assessment, with or without a separate interview. The vulnerability assessment (“Annex II”) would then lead to an EASO opinion recommending or not, the exemption of the applicant from the fast-track border procedure. According to EASO, “Since July 2019, the aim had been for all applicants to be properly screened during the reception and identification procedure before an interview was scheduled. Where vulnerability was only identified by the EASO caseworker during the interview, no interruption was ordered. The caseworker would continue and complete the interview, and then transmit any information on vulnerability together with the rest of the file to the Asylum Service. Accordingly, EASO did no longer conduct vulnerability assessments nor issued vulnerability opinions. It was up to the Asylum Service to assess whether or not the applicant should be exempted from the fast-track border procedure.”<sup>507</sup>

However, although the law previously contained express provisions requiring that applicants in need of special procedural guarantees and unaccompanied children always be examined under the regular procedure, the IPA no longer provides for exemption of vulnerable persons from special procedures as a general rule.<sup>508</sup>

Applicants in need for special procedural guarantees are only exempted from the [Accelerated Procedure](#), the [Border Procedure](#) and the [Fast-Track Border Procedure](#) where adequate support cannot be provided.<sup>509</sup>

Unaccompanied children below the age of 15, as well as unaccompanied children who are victims of trafficking, torture, rape or other forms of serious psychological, physical and sexual violence are always

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<sup>504</sup> Information provided from the Asylum Service, 18<sup>th</sup> of February 2020.

<sup>505</sup> Articles 50(2) and 45(7) L 4375/2016.

<sup>506</sup> Information provided by the Asylum Service, 17 February 2020.

<sup>507</sup> ECRE, *The role of EASO operations in National Asylum Systems*, November 2019, available at: <https://bit.ly/3eVarAN>.

<sup>508</sup> Articles 39(5)(d) and 72(3) IPA provide state that the determination of an applicant as vulnerable has the sole effect of triggering immediate care of particular reception needs and prioritised examination.

<sup>509</sup> Article 67(3) IPA. This provision clarifies that, where the applicant falls within the cases where no appeals have no automatic suspensive effect, he or she must have access to interpretation services, legal assistance and at least one week to prepare the appeal (see also [Border Procedure](#) and [Fast-Track Border Procedure](#)).

processed under the regular procedure.<sup>510</sup> For those aged 15 or over who are not victims of trafficking, torture or violence, exemption from special procedures depends on the individual grounds applied by the authorities in each case:<sup>511</sup>

Exemption of unaccompanied children aged 15 or over from special procedures			
Accelerated procedure		Border and fast-track border procedures	
Ground		Ground	
Claim unrelated to protection	✓	Protection in another Member State	✓
Safe country of origin	✗	First country of asylum	✓
False information or documents	✓	Safe third country	✗
Destruction or disposal of documents	✓	Subsequent application	✗
Clearly unconvincing application	✓	Application by dependant	✓
Subsequent application	✗	Claim unrelated to protection	✓
Application to frustrate return proceedings	✓	Safe country of origin	✗
Application not as soon as possible	✓	False information or documents	✗
Refusal to be fingerprinted under Eurodac	✓	Destruction or disposal of documents	✗
Threat to public order or national security	✗	Clearly unconvincing claim	✓
Refusal to be fingerprinted under national law	✓	Application to frustrate return proceedings	✓
Vulnerable person	✓	Application not as soon as possible	✓
		Refusal to be fingerprinted under Eurodac	✓
		Threat to public order or national security	✗
		Refusal to be fingerprinted under national law	✓
		Vulnerable person	✓

As far as the **Safe Third Country** concept is concerned, the law specifies that unaccompanied children may only be subject to the border and fast-track border procedure where this is in line with their best interests.<sup>512</sup>

In several cases in 2018, the Administrative Court of Appeals has annulled decisions issued under the fast-track border procedure on the ground that the applicant should have been exempted therefrom and referred to the regular procedure for reasons of vulnerability.<sup>513</sup> The Court stressed that the applicant is under no obligation to prove “procedural damage” (δικονομική βλάβη) stemming from the failure to exempt him or her from the fast-track border procedure.<sup>514</sup> In 2019 though, in similar case, the Administrative Court of Appeals argued that the applicant did not specify the damage sufficiently and that the “procedural damage” claim was vague.<sup>515</sup>

Pressure on the Greek authorities to abolish the exemptions of vulnerable applicants from the fast-track border procedure and to “reduce the number of asylum seekers identified as vulnerable”, for the sake of the implementation of the EU-Turkey statement and the increase of returns to Turkey is already reported since late 2016.<sup>516</sup> However, as underlined by *inter alia* Médecins Sans Frontières “far from being over-

<sup>510</sup> Article 75(7) IPA.

<sup>511</sup> Articles 83(10) and 90(4) IPA.

<sup>512</sup> Article 90(4)(d) IPA.

<sup>513</sup> See e.g. Administrative Court of Appeal of Piraeus, Decision 558/2018, available in Greek at: <https://bit.ly/2WbqvDY>, Decision 642/2018 available in Greek at: <https://bit.ly/2KHJXEM>.

<sup>514</sup> Administrative Court of Appeal of Piraeus, Decision 519/2018, available in Greek at: <https://bit.ly/2JiaUB0>; Decision 563/2018, available in Greek at: <https://bit.ly/2FgXcdR>.

<sup>515</sup> Administrative Court of Appeals of Piraeus, Decision 271/2019, available in Greek at: <https://bit.ly/3cQnOjy>.

<sup>516</sup> European Commission, *Joint Action Plan of the EU Coordinator on the implementation of certain provisions of the EU-Turkey Statement*, Annex 1 to COM(2016) 792, 8 December 2016, paras 2 and 3; Human Rights Watch, ‘EU/Greece: Pressure to minimise numbers of migrants identified as vulnerable’, 1 June 2017,

identified, vulnerable people are falling through the cracks and are not being adequately identified and cared for.”<sup>517</sup> These findings were confirmed one and a half year later by Oxfam, which reported in January 2019 that the Greek reception and identification system has “broken down” and is systematically failing to identify and therefore provide the protection much needed to the most vulnerable asylum seekers on **Lesvos**.<sup>518</sup> In a recent report, MSF added that “inefficient and inadequate identification procedures are responsible for the prolonged stay of victims of torture in substandard living conditions, inadequate access to medical care, unfair treatment of their asylum claim and exposure to re-traumatization.”<sup>519</sup>

Within this framework, L 4540/2018, transposing the recast Reception Conditions Directive, has omitted persons suffering from PTSD from the list of vulnerable applicants.<sup>520</sup> Subsequently, following the 2019 amendment, IPA has not included persons suffering from post-traumatic stress disorder (PTSD) in the list of vulnerable individuals.

### 2.3. Prioritisation

Both definitions “vulnerable group” and “applicant in need of special procedural guarantees” are used in relation to other procedural guarantees such as the examination of applications by way of priority.<sup>521</sup> For example Article 51(6) L 4375/2016 provides that applications lodged by applicants belonging to vulnerable groups within the meaning of Article 14(8) L 4375/2016 or are in need of special procedural guarantees “may [be] register[ed] and examine[d] by priority”. According to the IPA, applications of persons belonging to vulnerable groups are examined “under absolute priority”.<sup>522</sup>

The number of applications by vulnerable persons which were examined by priority is not available. However, as stated in [Regular Procedure: Personal Interview](#), GCR is aware of applications by persons officially recognized as vulnerable whose interview has been scheduled over one year after registration.

### 3. Use of medical reports

#### Indicators: Use of Medical Reports

1. Does the law provide for the possibility of a medical report in support of the applicant’s statements regarding past persecution or serious harm?  
 Yes       In some cases       No
2. Are medical reports taken into account when assessing the credibility of the applicant’s statements?  
 Yes       No

Upon condition that the applicant consents to it, the law provides for the possibility for the competent authorities to refer him or her for a medical and/or psychosocial diagnosis where there are signs or claims, which might indicate past persecution or serious harm. These examinations shall be free of charge and shall be conducted by specialised scientific personnel of the respective specialisation and their results shall be submitted to the competent authorities as soon as possible. Otherwise, the applicants concerned must be informed that they may be subjected to such examinations at their own initiative and expenses. Any results and reports of such examinations had to be taken into consideration by the Asylum Service.<sup>523</sup>

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available at: <http://bit.ly/2qD2fQb>; AIDA, *The concept of vulnerability in European asylum procedures*, September 2017, 17.

<sup>517</sup> MSF, *A dramatic deterioration for asylum seekers on Lesvos*, July 2017, 3.

<sup>518</sup> Oxfam, *Vulnerable and abandoned*, January 2019.

<sup>519</sup> Médecins Sans Frontières’ submission to the United Nations Committee Against Torture prior to the periodic review of Greece, 67th Session June 2019.

<sup>520</sup> Article 20(1) L. 4540/2018.

<sup>521</sup> See also Articles 39(6)(c) and 83(7) IPA.

<sup>522</sup> Article 39(5) IPA.

<sup>523</sup> Article 53 L 4375/2016.

The new IPA, provides that any results and reports of such examinations are taken into consideration, in order the deciding authorities to established if the applicant's allegations of persecution or serious harm are likely to be well-founded".<sup>524</sup>

Specifically, for persons who have been subjected to torture, rape or other serious acts of violence, a contested provision was introduced in 2018,<sup>525</sup> according to which, such persons should be certified by medical certificate issued by a public hospital or by an adequately trained doctor of a public sector health care service provider.<sup>526</sup> The provision has been maintained by the IPA.<sup>527</sup>

The main critiques against this provision are that doctors in public hospitals and health care providers are not adequately trained to identify possible victims of torture, and that the law foresees solely a medical procedure. According to the Istanbul Protocol, a multidisciplinary approach is required – a team of a doctor, a psychologist and a lawyer – for the identification of victims of torture. Moreover, stakeholders have expressed fears that certificates from other entities than public hospital and public health care providers would not be admissible in the asylum procedure and in judicial review before courts. A recent case from the Administrative Court of Appeal of Piraeus confirms those fears. The Court upheld the second instance negative decision by mentioning that "following the entry into force of L. 4540/2018, Article 23, victims of torture are certified by medical certificate issued by public hospital, army hospital or qualified doctors of public medical entities."<sup>528</sup>

Few such cases of best practice, where Asylum Service officers referred applicants for such reports, were recorded by GCR in 2019 . However, several cases have been reported to GCR where the Asylum Service officer did not take into account the medical reports provided (see [Special Procedural Guarantees](#)).

#### 4. Legal representation of unaccompanied children

##### Indicators: Unaccompanied Children

1. Does the law provide for the appointment of a representative to all unaccompanied children?

Yes

No

Under Greek law, any authority detecting the entry of an unaccompanied or separated child into the Greek territory shall take the appropriate measures to inform the closest Public Prosecutor's office, the National Centre for Social Solidarity (*Εθνικό Κέντρο Κοινωνικής Αλληλεγγύης*, ΕΚΚΑ) or any other competent authority for the protection of unaccompanied and/or separated children.<sup>529</sup> The General Directorate of Social Solidarity of the Ministry of Labour, Social Security and Social Solidarity is responsible for further initiating and monitoring the procedure of appointing a guardian to the child and ensuring that his or her best interests are met at all times.

L 4554/2018 introduced for the first time a regulatory framework for the guardianship of unaccompanied children in Greek law. According to the new law, a guardian will be appointed to a foreign or stateless person under the age of 18 who arrives in Greece without being accompanied by a relative or non-relative exercising parental guardianship or custody. The Public Prosecutor for Minors or the local competent Public Prosecutor, if no Public Prosecutor for minors exists, is considered as the temporary guardian of the unaccompanied minor. This responsibility includes, among others, the appointment of a permanent

<sup>524</sup> Article 72(2) IPA.

<sup>525</sup> Article 23 L 4540/2018.

<sup>526</sup> Immigration.gr, 'Η πιστοποίηση θυμάτων βασανιστηρίων αποκλειστικό «προνόμιο» του κράτους;', May 2018, available in Greek at: <https://bit.ly/2TVAMXv>.

<sup>527</sup> Article 61(1) IPA.

<sup>528</sup> Administrative Court of Appeal of Piraeus, Decision 20/2019, available in Greek at: <https://bit.ly/2CrNiE6>.

<sup>529</sup> Article 60(1) IPA.

guardian of the minor.<sup>530</sup> The guardian of the minor is selected from a Registry of Guardians created under the National Centre for Social Solidarity (*Εθνικό Κέντρο Κοινωνικής Αλληλεγγύης*, ΕΚΚΑ).<sup>531</sup> In addition, the law provides a best interest of the child determination procedure following the issuance of standard operational procedure to be issued.<sup>532</sup> The law also creates the Supervisory Guardianship Board, which will be responsible for ensuring legal protection for unaccompanied children with respect to disabilities, religious beliefs and custody issues.<sup>533</sup> Additionally, the law establishes the Department for the Protection of Unaccompanied Minors at ΕΚΚΑ, which will have the responsibility of guaranteeing safe accommodation for unaccompanied children and evaluating the quality of services provided in such accommodation.<sup>534</sup>

Under Article 18 L 4554/2018, the guardian has responsibilities relevant to the integration of unaccompanied children, which include:

- ❖ ensuring decent accommodation in special reception structures for unaccompanied children;
- ❖ representing and assisting the child in all judicial and administrative procedures;
- ❖ accompanying the child to clinics or hospitals;
- ❖ guaranteeing that the child is safe during their stay in the country;
- ❖ ensuring that legal assistance and interpretation services are provided to the child;
- ❖ providing access to psychological support and health care when needed;
- ❖ taking care of enrolling the child in formal or non-formal education;
- ❖ taking necessary steps to assign custody of the child to an appropriate family (foster family), in accordance with the applicable legal provisions;
- ❖ ensuring that the child's political, philosophical and religious beliefs are respected and freely expressed and developed; and
- ❖ behaving with sympathy and respect to the unaccompanied child.

In practice, the system of guardianship is still not operating. According to the initial version of L. 4554/2018 (Art. 32), the Guardianship Law should have entered into force at the time that the Ministerial Decision approving the Rules of Procedure of the Supervision Board provided by Art. 19(6) L. 4554/2018 would be issued. Following an amendment introduced in May 2019 (Art. 85(2) L. 4611/2019, Gov. Gazette A 73/17.5.2019), the entry into force of L. 4554/2018 has been postponed until the 1st of September 2019. However, the entry into force of L. 4554/2018 has been further postponed until the 1st of March 2020 (Art. 73 (1) L. 4623/2019, Gov. Gazette A 134/9.8.2019).<sup>535</sup> By the end of May 2020 the system was not in place.

In May 2019, the European Committee on Social Rights of the Council of Europe, following a collective complaint lodged by ECRE and ICJ, with the support of GCR, adopted its Decision on Immediate Measures, and indicated to the Greek Authorities, *inter alia*, to immediately appoint effective guardians.<sup>536</sup> Greek Authorities have not complied with said Decision by the end of May 2020.

There are still major issues that cause concern. Firstly, contrary to the FRA's opinion regarding the significant improvements in speeding up the registration of the asylum claim of unaccompanied minors in

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<sup>530</sup> Article 16 L 4554/2018.

<sup>531</sup> *Ibid.*

<sup>532</sup> Article 21 L 4554/2018.

<sup>533</sup> Article 19 L 4554/2018.

<sup>534</sup> Article 27 L 4540/2018.

<sup>535</sup> Response by the International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) to the Observations of the Greek Government on the Merits of Collective Complaint 173/2018.

<sup>536</sup> European Committee on Social Rights, Decision on admissibility and on immediate measures, International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, 23 May 2019.

the “hotspots”,<sup>537</sup> the GCR’s findings show that there are massive delays in the registration on the mainland, especially for Pakistani and Bangladeshi minors, who can wait up to six months for an appointment in the RAOs of Athens and Piraeus.

Secondly, the housing situation has not improved, since the accommodation shelters are not enough. According to the official statistics of *EKKA* (National Center for Social Solidarity) as of 31 December 2019, there were 195 children in ‘protective custody’ which de facto amounts to detention and 1,045 in insecure housing conditions.<sup>538</sup>

The fact that the public sector is severely untrained and understaffed hinders the situation even more. Especially, assigning this additional task of guardianship to prosecutors has proved to be disastrous over the years, especially given the number of prosecutors and their actual workload as prosecuting authorities.<sup>539</sup>

Despite the welcome development of a new legal framework under L 4554/2018, the proper implementation of the guardianship system should be further monitored. The Greek Ombudsman noted in his Observations on the draft bill on the Law 4636/2019 that there are several provisions, which may complicate the protection of migrant children and hinder the implementation of existing legislation. According to his report, there is a concerning lack of clarity in the definitions of unaccompanied and separated children, uncertainty over the competent services and absence of any reference to the Guardianship Law 4554/2018 and to secondary legislation setting out age assessment procedures.<sup>540</sup>

According to the official statistics provided by the Asylum Service, during the year 2019, there were submitted 3,330 applications for international protection from unaccompanied minors, of which 3,056 from boys and 274 from girls.<sup>541</sup>

## E. Subsequent applications

**Indicators: Subsequent Applications**

Does the law provide for a specific procedure for subsequent applications?     Yes    No

Is a removal order suspended during the examination of a first subsequent application?

❖ At first instance	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
❖ At the appeal stage	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> In some cases (under the IPA)

Is a removal order suspended during the examination of a second, third, subsequent application?

❖ At first instance	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
❖ At the appeal stage	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	

The law sets out no time limit for lodging a subsequent application.<sup>542</sup>

<sup>537</sup> FRA - Update of the 2016 Opinion of the European Union Agency for Fundamental Rights on fundamental rights in the ‘hotspots’ set up in Greece and Italy (February 2019).

<sup>538</sup> Situation Update: Unaccompanied Children (UAC) in Greece 31 December 2019, available at: <https://data2.unhcr.org/en/documents/download/73385>.

<sup>539</sup> Rosa Luxemburg Foundation, *Children Cast Adrift: Exclusion and exploitation of unaccompanied minors (UAMs) in Greece (2019)*, available at: <https://bit.ly/2y9sEd3>.

<sup>540</sup> Response by the International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) to the Observations of the Greek Government on the Merits of Collective Complaint 173/2018.

<sup>541</sup> Information provided from the Asylum Service, 18<sup>th</sup> of February 2020.

<sup>542</sup> 59 L 4375/2016 and Article 89 IPA

A subsequent application can also be lodged by a member of a family who had previously lodged an application. In this case the preliminary examination concerns the eventual existence of evidence that justifies the submission of a separate application by the depending person.<sup>543</sup>

**2,369** subsequent asylum applications were submitted to the Asylum Service in 2019:

Subsequent applicants: 2019	
Country of origin	
Pakistan	722
Albania	256
Egypt	182
Afghanistan	160
Bangladesh	148
Other	901
<b>Total</b>	<b>2,369</b>

Source: Asylum Service.

A total of 841 subsequent applications were considered admissible and referred to be examined on the merits, while 1,423 subsequent applications were dismissed as inadmissible in 2019.<sup>544</sup>

The definition of “final decision” was amended in 2018. According to the new definition, as maintained in the IPA, a “final decision” is a decision granting or refusing international protection (a) taken [by the Appeals Committees] following an administrative appeal, or (b) which is no longer amenable to an administrative appeal due to the expiry of the time limit to appeal.<sup>545</sup> An application for annulment can be lodged against the final decision before the Administrative Court.<sup>546</sup>

The registration of a subsequent application in practice is suspended for as long as the deadline for the submission of an application for the annulment of the second instance negative decision before the Administrative Court is still pending,<sup>547</sup> unless the applicant proceeds to waive his or her right to legal remedies. The applicant can only waive this right in person or through a proxy before the competent Administrative Court of Appeal. This procedure poses serious obstacles to applicants subject to the **Fast-Track Border Procedure** who intend to submit a subsequent application.

This is in particular the case for applicants whose application has been examined without having being processed by the RIS due to the shortcomings in the **Identification** procedure and without having their vulnerability been identified, or cases regarding vulnerabilities appeared or identified in a later stage. Cases where vulnerability has been identified by the RIS or medical actors operating on the islands, e.g. public hospitals, and in which relevant certificates were issued after the second instance examination or even after the issuance of the second instance decision have been encountered by GCR. Therefore, the identification of vulnerability is a “new, substantial element” as prescribed by law.

However, according to the practice followed, applicants whose application has been rejected within the framework of the fast-track border procedure are immediately arrested and detained upon receiving a second instance negative decision in order to be swiftly readmitted to Turkey. As they remain detained there was no way for them to present themselves before the competent Administrative Court, located in **Piraeus**, Attica region and in Athens, in order to waive the right to submit an onward appeal and

<sup>543</sup> Article 59(5) L 4375/2016 and Article 89(5) IPA.

<sup>544</sup> Information provided by the Asylum Service, 17 February 2020.

<sup>545</sup> Article 34(e) L 4375/2016, as amended by Article 28(5) L 4540/2018. See also Article 63(a) IPA.

<sup>546</sup> Article 34(e) L 4375/2016, as amended by Article 28(5) L 4540/2018 and Article 108(1) IPA.

<sup>547</sup> Said deadline was up until the end of 2019 60 days – Since the entry into force of the IPA is 30 days.

respectively to lodge a subsequent application. It is also extremely difficult to locate a notary on the island willing to proceed to the detention facility and prepare a proxy form that will be sent to a lawyer on the mainland who will waive the right on behalf of the applicant. Even if this is the case, the fact that readmission procedures may be completed within a number of days from notification of the second instance decision means that the time required for this procedure is not usually available and the right to submit a subsequent application is hindered for applicants under the fast-track border procedure.

### **Preliminary examination procedure**

When a subsequent application is lodged, the relevant authorities examine the application in conjunction with the information provided in previous applications.<sup>548</sup>

Subsequent applications are subject to a preliminary examination, during which the authorities examine whether new substantial elements have arisen or are submitted by the applicant. The preliminary examination of subsequent applications is conducted within 5 days to assess whether new substantial elements have arisen or been submitted by the applicant.<sup>549</sup> According to the IPA, the examination takes place within 2 days if the applicant's right to remain on the territory has been withdrawn.<sup>550</sup>

During that preliminary stage, according to the law all information is provided in writing by the applicant,<sup>551</sup> however in practice subsequent applications have been registered with all information provided orally.

If the preliminary examination concludes on the existence of new elements "which affect the assessment of the application for international protection", the subsequent application is considered admissible and examined on the merits. The applicant is issued a new "asylum seeker's card" in that case. If no such elements are identified, the subsequent application is deemed inadmissible.<sup>552</sup>

Until a final decision is taken on the preliminary examination, all pending measures of deportation or removal if applicants who have lodged a subsequent asylum application are suspended.<sup>553</sup>

Exceptionally, under the IPA, "the right to remain on the territory is not guaranteed to applicants who (a) make a first subsequent application which is deemed inadmissible, solely to delay or frustrate removal, or (b) make a second subsequent application after a final decision dismissing or rejecting the first subsequent application".<sup>554</sup>

Any new submission of an identical subsequent application is dismissed as inadmissible.<sup>555</sup>

Until the completion of this preliminary procedure, applicants are not provided with proper documentation and have no access to the rights attached to asylum seeker status or protection. The asylum seeker's card is provided after a positive decision on admissibility.

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<sup>548</sup> Article 59(1) L 4375/2016 and Article 89(1) IPA.

<sup>549</sup> Article 59(2) L 4375/2016, as amended by Article 28(13) L 4540/2018 and Article 89(2) IPA.

<sup>550</sup> *Ibid*, citing Article 89(9) IPA.

<sup>551</sup> Article 59(2) L 4375/2016 and Article 89(2) IPA.

<sup>552</sup> Article 59(4) L 4375/2016 and Article 89(4) IPA.

<sup>553</sup> Article 59(3) L 4375/2016 and Article 89(9) IPA.

<sup>554</sup> Article 59(9) L 4375/2016, inserted by Article 28(13) L 4540/2018 and Article 89(9) IPA.

<sup>555</sup> Article 89(7) IPA.



## F. The safe country concepts

### Indicators: Safe Country Concepts

1. Does national legislation allow for the use of “safe country of origin” concept?  Yes  No
  - ❖ Is there a national list of safe countries of origin?  Yes  No
  - ❖ Is the safe country of origin concept used in practice?  Yes  No
2. Does national legislation allow for the use of “safe third country” concept?  Yes  No
  - ❖ Is the safe third country concept used in practice?  Yes  No
3. Does national legislation allow for the use of “first country of asylum” concept?  Yes  No

Following the EU-Turkey Statement of 18 March 2016, the provisions concerning the “first country of asylum” and the “safe third country” concepts were applied for the first time in Greece vis-à-vis Turkey. Serious concerns about the compatibility of the EU-Turkey Statement with international and European law, and more precisely the application of the “safe third country” concept, have been raised since the publication of the Statement.<sup>556</sup>

On 28 February 2017, the General Court of the European Union gave an order with regard to an action for annulment brought by two Pakistani nationals and one Afghan national against the EU-Turkey Statement. The order stated that “the EU-Turkey Statement, as published by means of Press Release No 144/16, cannot be regarded as a measure adopted by the European Council, or, moreover, by any other institution, body, office or agency of the European Union, or as revealing the existence of such a measure that corresponds to the contested measure.”<sup>557</sup> Therefore “the Court does not have jurisdiction to rule on the lawfulness of an international agreement concluded by the Member States.”<sup>558</sup> The decision became final on 12 September 2018, as an appeal against it before the CJEU was rejected.<sup>559</sup>

### 1. Safe third country

The “safe third country” concept is a ground for inadmissibility (see [Admissibility Procedure](#)).

According to Article 56 (1) L 4375/2016, previously in force, a country shall be considered as a “safe third country” for a specific applicant when all the following criteria are fulfilled:

- (a) The applicant's life and liberty are not threatened for reasons of race, religion, nationality, membership of a particular social group or political opinion;
- (b) This country respects the principle of *non-refoulement*, in accordance with the Refugee Convention;
- (c) The applicant is in no risk of suffering serious harm according to Article 15 of PD 141/2013;
- (d) The country prohibits the removal of an applicant to a country where he or she risks to be subject to torture or cruel, inhuman or degrading treatment or punishment, as defined in international law;

<sup>556</sup> See e.g. NCHR, *Έκθεση για τη συμφωνία ΕΕ-Τουρκίας της 18ης Μαρτίου 2016 για το προσφυγικό/μεταναστευτικό ζήτημα υπό το πρίσμα του Ν. 4375/2016*, 25 April 2016, available in Greek at: <http://bit.ly/2mxAncu>; Parliamentary Assembly of the Council of Europe (PACE), Resolution 2109 (2016) “The situation of refugees and migrants under the EU-Turkey Agreement of 18 March 2016”, available at: <http://bit.ly/2f1Sx1Y>; United Nations Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants on his mission to Greece*, A/HRC/35/25/Add.2, 24 April 2017, available at: <http://bit.ly/2rHF7kl>, para 31.

<sup>557</sup> General Court of the European Union, Cases T-192/16, T-193/16 and T-257/16 *NF, NG and NM v. European Council*, Order of 28 February 2017, press release available at: <http://bit.ly/2lWZPrr>.

<sup>558</sup> *Ibid.*

<sup>559</sup> CJEU, Cases C-208/17 P, C-209/17 P and C-210/17 P *NF, NG and NM v European Council*, Order of 12 September 2018.

- (e) The possibility to apply for refugee status exists and, if the applicant is recognised as a refugee, to receive protection in accordance with the Refugee Convention; and
- (f) The applicant has a connection with that country, under which it would be reasonable for the applicant to move to it.

The said six criteria were repeated in Article 86(1) IPA. A more detailed provision with regards the connection criteria has been provided by Article 86(1-f) IPA. Additionally, the IPA has provided the possibility for the establishment of a list of safe third countries by way of Joint Ministerial Decision.<sup>560</sup> There is no list of safe third countries in Greece at the time of writing.

According to the law, the aforementioned criteria are to be assessed in each individual case, except where a third country has been declared as generally safe in the national list.<sup>561</sup> Such provision seems to derogate from the duty to carry out an individualized assessment of the safety criteria where the applicant comes from a country included in the list of “safe third countries”, contrary to the Directive and to international law. Even where a country has been designated as generally safe, the authorities should conduct an individualized examination of the fulfillment of the safety criteria. Moreover, there should be a possibility to challenge both the general designation of a country as safe and the application of the concept in an individual case.<sup>562</sup>

Until the end of 2019, the safe third country concept was only applied in the context of the [Fast-Track Border Procedure](#) under Article 60(4) L 4375/2016 on the islands for those arrived after 20 March 2016 and subject to the EU-Turkey Statement, and in particular vis-à-vis nationalities with a recognition rate over 25%, thereby including Syrians, Afghans and Iraqis. Since applications of persons identified as vulnerable or falling within the scope of the Dublin Regulation family provisions, they were exempted from this procedure and they were not subject to the safe third country concept.

## 1.1. Safety criteria

### 1.1.1. Applications lodged by Syrian nationals

In 2019, the Asylum Service issued 3,746 first instance Decisions regarding applications submitted by Syrian applicants initially subject to the fast-track border procedure. Out of those, the vast majority of applications submitted by Syrian applicants and examined under the safe third country concept, i.e. not exempted by the fast track border procedure for reasons of identified vulnerability or application of Dublin provisions, have been rejected as inadmissible on the basis of the safe third country concept.<sup>563</sup>

Since mid-2016, namely from the very first decisions applying the safe third country concept in the cases of Syrian nationals, until today, first instance decisions dismissing the applications of Syrian nationals as inadmissible on the basis that Turkey is a safe third country in the [Fast-Track Border Procedure](#), are based on a pre-defined template provided to Regional Asylum Offices or Asylum Units on the islands, and are identical, except for the applicants’ personal details and a few lines mentioning their statements, and repetitive.<sup>564</sup>

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<sup>560</sup> Article 86(3) IPA.

<sup>561</sup> Article 86(2) IPA.

<sup>562</sup> RSA Comments on the International Protection Bill, October 2019, available at: <https://bit.ly/3eqsDC0>, p. 4-5.  
<sup>563</sup> Information provided by the Asylum Service, 17 February 2020; 235 applications have been rejected as inadmissible; 44 applications have been considered as admissible following examination on the basis of the safe third country concept.

<sup>564</sup> ECRE, The role of EASO operations in national asylum systems, An analysis of the current European Asylum Support Office (EASO) Operations involving deployment of experts in asylum procedures at Member State level, 29 November 2019, available at: <https://bit.ly/2RVALRt>, p. 33 and 35, ECRE et al., *The implementation of the hotspots in Italy and Greece*, December 2016, 38. On **Lesvos**, see GCR, *GCR Mission to Lesvos – November 2016*, available at: <http://bit.ly/2kbN7F0>, 20; On **Samos**, see GCR, *GCR Mission to Samos – June*

Specifically, the Asylum Service, reaches the conclusion that Turkey is a safe third country for Syrian nationals, relying on (a) the provisions of Turkish legal regime in force, i.e. the Turkish Law on Foreigners and International Protection (LFIP), published on 4 April 2013,<sup>565</sup> the Turkish Temporary Protection Regulation (TPR), published on 2014<sup>566</sup> and the Regulation on Work Permit for Applicants for and Beneficiaries of International Protection, published on 26 April 2016,<sup>567</sup> b) the letters, dated 2016, exchanged between the European Commission and Turkish authorities,<sup>568</sup> (c) the letters, dated 2016, exchanged between the European Commission and the Greek authorities,<sup>569</sup> (d) the 2016 letters of UNHCR to the Greek Asylum Service, regarding the implementation of Turkish law about temporary protection for Syrians returning from Greece to Turkey and (e) on sources, indicated only by title and link, without proceeding to any concrete reference and legal analysis of the parts they base their conclusions.

Although a number of more recent sources<sup>570</sup> have been added to the endnotes of some decisions issued since late 2018 and up until today, their content is not at all assessed or taken into account and applications continue to be rejected as inadmissible on the same reasoning as before. No 2019 source is mentioned.

Similarly, as reported in a comparative analysis issued in 2019:

- most EASO opinions reviewed with regards admissibility cases of Syrian nationals, “do not examine the individual safety criteria of Article 38(1) of the recast Asylum Procedures Directive in order, and deem that the safety criteria are met. None of the reviewed opinions makes an assessment of the connection requirement under Article 38(2)(a) of the Directive [...] Caseworkers affirm that the applicant can access and benefit from protection in accordance with the 1951 Refugee Convention and is not at risk of persecution, serious harm or refoulement in Turkey”.<sup>571</sup>
- “based on the sample of cases reviewed, it appears that the citation of sources such as AIDA by both EASO and the Asylum Service is selective. The opinions and decisions systematically cite introductory passages of the report referring to Turkey’s legal framework, while critical passages documenting gaps in practice and legislation in areas such as access to employment, or the derogation from the non-refoulement principle introduced since 2016, are not included in the vast majority of cases”.<sup>572</sup>
- “the country information cited in opinions and decisions is often out of date. For example, several opinions of EASO on Syrians cite the December 2015 version of the AIDA Country Report on

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2016, available at: <http://bit.ly/2kCHMDm>, 20 On **Leros and Kos**, see GCR, *GCR Mission to Leros and Kos – May to November 2016*, 32.

<sup>565</sup> Turkey: Law No. 6458 of 2013 on Foreigners and International Protection, 4 April 2013, as amended by the Emergency Decree No 676, 29 October 2016, available at: <https://www.refworld.org/docid/5167fbb20.html>.

<sup>566</sup> National Legislative Bodies / National Authorities, *Turkey: Temporary Protection Regulation*, 22 October 2014, available at: <https://www.refworld.org/docid/56572fd74.html>

<sup>567</sup> National Legislative Bodies / National Authorities, *Turkey: Regulation on Work Permit of International Protection Applicants and International Protection Status Holders*, 26 April 2016, available at: <https://www.refworld.org/docid/582c6ff54.html>.

<sup>568</sup> Letters between the European Commission and the Turkish and Greek authorities, available at: <https://bit.ly/2ygrz32>.

<sup>569</sup> Ibid.

<sup>570</sup> Sources made public since 2018 and mentioned in the first instance decision are: AIDA Report on Turkey, Update 2017; United States Department of State, Turkey 2017, Human Rights Report; European Commission, Turkey 2018 Report, SWD(2018) 153 final, 17 April 2018; European Commission, ECHO Factsheet – Turkey Refugee Crisis – June 2018.

<sup>571</sup> ECRE, The role of EASO operations in national asylum systems, An analysis of the current European Asylum Support Office (EASO) Operations involving deployment of experts in asylum procedures at Member State level, 29 November 2019, available at: <https://bit.ly/2VcFFLU>, pp. 24, 38

<sup>572</sup> Ibid, p. 36.

Turkey, and not the more recent updates of the report. The Asylum Service decisions have updated some of the sources cited... Yet, the content of the decision remains intact despite the updated footnotes".<sup>573</sup>

Accordingly, negative first instance decisions, qualifying Turkey as a safe third country for Syrians, are not only identical and repetitive – failing to provide an individualised assessment, in violation of Articles 10 and 38 of the Directive 2013/32/EU, but also outdated insofar, as they do not take into account developments after 2016, failing to meet their obligation to investigate *ex officio* the material originating from reliable and objective sources as regards the situation in Turkey, and the actual regime in the country, given the absolute nature of the protection afforded by Article 3 ECHR.

As the same template decision is used since 2016, the finding of the United Nations Special Rapporteur on the human rights of migrants in 2017, that “admissibility decisions issued are consistently short, qualify Turkey as a safe third country and reject the application as inadmissible: this makes them practically unreviewable”<sup>574</sup> remain valid. Respectively, as far as GCR is aware, second instance decisions issued by the Independent Appeals Committees for Syrian applicants systematically uphold the first instance inadmissibility decisions, if no vulnerability is identified.

As mentioned above, during 2019, as a rule applications submitted by Syrians applicants, for whom no vulnerability has been identified or the Dublin Regulation is not applicable, are rejected as inadmissible on the basis of the safe third country concept. However, as it was also the case in previous years, in 2019 a number of first instance decisions issued for Syrian applicants declared the application admissible. As far as GCR is aware, such decisions include: cases of Syrian single women whose application has been considered admissible on the basis that the rights of a single refugee woman are not effectively protected in practice in Turkey; Syrian applicants of Kurdish origin; and applicants of Palestinian origin with former habitual residence in Syria who cannot access temporary protection status as they have not arrived in Turkey directly from Syria. However, this line of reasoning is not always consistently applied and contradictions between the reasoning and the outcome of similar cases occur.

For a detailed analysis of the first instance decisions rejecting applications submitted by Syrian as inadmissible on the basis of safe third country, see [Safe third country](#), AIDA Report on Greece, update 2016, 2017 and 2018 respectively. These findings are still relevant as the same template is used since mid-2016.

An indicative example of a first instance inadmissibility decision can be found in the 2017 update of the AIDA report on Greece, which remains the same up until today.

Respectively, as far as GCR is aware, second instance decisions issued by the Independent Appeals Committees for Syrian applicants systematically uphold the first instance inadmissibility decisions, if no vulnerability is identified.

In this regard, it should be recalled that in 2016, the overwhelming majority of second instance decisions issued by the [Backlog Appeals Committees](#) rebutted the safety presumption.<sup>575</sup> However, following reported pressure by the EU with regard to the implementation of the EU-Turkey statement,<sup>576</sup> the

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<sup>573</sup> Ibid, p. 37.

<sup>574</sup> United Nations Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants on his mission to Greece*, A/HRC/35/25/Add.2, 24 April 2017, para 81.

<sup>575</sup> The United Nations Special Rapporteur on the human rights of migrants commended their independence against “enormous pressure from the European Commission”: *Report on the visit to Greece*, 24 April 2017, para 85.

<sup>576</sup> New Europe, ‘EU Council: Why Greece should consider Turkey safe for Syrian refugees’, 9 June 2016, available at: <http://bit.ly/2lWDYOa>; Keep Talking Greece, ‘EU presses Greece to change asylum appeal committees that consider “Turkey is not a safe country”’, 11 June 2016, available at: <http://bit.ly/2kNWR5D>.

composition of the Appeals Committees was – again – amended two months after the publication of L 4375/2016.

In 2017, contrary to the outcome of second instance decisions issued by the Backlog Appeals Committees in 2016, 98.2% of the decisions issued by the new Independent Appeals Committees upheld the inadmissibility decisions on the basis of the safe third country concept.

In 2018, the Independent Appeals Committees issued 78 decisions dismissing applications as inadmissible on the basis that Turkey can be considered as a safe third country for Syrian applicants. As far as GCR is aware, in 2018 there have been only two cases of Syrian families of Kurdish origin, originating from Afrin area, in which the Appeals Committee ruled that Turkey cannot be considered as a safe third country for said Syrian applicants due to the non-fulfillment of the connection criteria.<sup>577</sup>

Respectively, in 2019 and as far as GCR is aware, all cases of Syrian applicants examined under the fact track border procedure have been rejected as inadmissible on the basis of the safe third country concept (29 Decisions),<sup>578</sup> if no vulnerability was identified or no grounds in order the case to be referred for humanitarian status were present. To the knowledge of GCR, there have been only two Appeals Committee's Decision, issued in 2020, in cases supported by GCR, that reversed the first instance inadmissible decision and in which the Appeals Committee accepted the Appeals and declared them as admissible. Both cases concerned a Syrian family with minor children of Kurdish origin. The Committee considered that the safe third country concept with regards Turkey could not be applied in these cases, on the basis that the connection requirement was not satisfied. The Committee took into consideration the short stay of the applicants in Turkey (10 days and 15 days respectively), the lack of supportive network, the lack of any living or professional ties in that country and the involvement of Turkey in the Syrian war, due to "any tie of the Applicants with said country has been destroyed".

Decisions of the Appeals Committees rejecting the case as inadmissible follow the line of reasoning of the Asylum Service to a great extent. Second instance decisions rely on the information provided by the letters of the Turkish authorities, considered as diplomatic assurances "of particular evidentiary value", on the relevant legal framework of Turkey, without taking into consideration any amendment or its application in practice and on a selective use of available sources, so as to conclude in a stereotypical way that the safety criteria are fulfilled.

For a more detailed analysis of Appeals Committees' decisions and the Council of State Decision on safe third country concept vis-a vis Turkey, with regards Syrian Applicants, see the 2017 update of the AIDA report on Greece.

### **1.1.2. Applications lodged by non-Syrian nationalities with a recognition rate over 25%**

As mentioned above, the examination of admissibility of applications by non-Syrians is applied only for applications lodged by persons belonging to nationalities with a recognition rate over 25%.

In 2019, a total of 29,476 asylum applications have been submitted on the islands by non-Syrian nationals from countries with a recognition rate over 25% and 29,639 first instance decisions have been issued.<sup>579</sup>

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<sup>577</sup> 4<sup>th</sup> Independent Appeals Committee, Decision 3225/28.02.2020, 28 February 2020. See also, 9<sup>th</sup> Independent Appeals Committee, Decisions 20802/25.9.2018 and 20898/26.9.2018, 25 September 2018, available at: <https://bit.ly/2Cjbmcd>.

<sup>578</sup> Information provided by the Appeals Authority on 21 April 2020.

<sup>579</sup> Information provided by the Asylum Service, 17 February 2020.

As far as GCR is aware, decisions on these applications generally conclude that the criterion set out in Article 56(1)(e) L 4375/2016 (“the possibility to apply for refugee status exists and, if the applicant is recognised as a refugee, to receive protection in accordance with the Geneva Convention”) is not fulfilled. In 2019, no first instance “inadmissibility” decision has been taken with regards applications submitted by non-Syrians belonging to nationalities with a recognition rate over 25%, based on the “safe third country” or “first country of asylum” concept.<sup>580</sup>

More precisely, decisions accepting the admissibility of the application, largely based on the same correspondence between EU institutions, Turkish and Greek authorities and UNHCR, as is the case of decisions for Syrian applicants, concluded that:

“In Turkey, despite the fact that the country has signed the Geneva Convention with a geographical limitation, and limits its application to refugees coming from Europe, for the rest of the refugees there is the possibility for international protection to be requested (conditional refugee status/subsidiary protection), as foreseen by the relevant legislation. However, it is not clear from the sources available to the Asylum Service that there will be a direct access (*άμεση πρόσβαση*) to the asylum procedure, while assurances have not been provided by the Turkish authorities as to such direct access for those returned from Greece. In addition, there is no sufficient evidence to show that ‘conditional refugee status’ is granted to all of those who are eligible for it (in particular statistical data on recognition rates and the average duration of the asylum procedure).

Moreover, data available to the Asylum Service for the time being show that in case international protection would be granted to the applicant, this will not be in accordance with the Geneva Convention. According to the data available to the Asylum Service, conditional refugee status beneficiaries do not have the right to family reunification, contrary to those granted with subsidiary or temporary protection. Furthermore, the regime granted to [beneficiaries of conditional refugee status] lasts only until their resettlement by the UNHCR.”

Given the fact that, the possibility of direct access (*άμεση πρόσβαση*) to the asylum procedure is not clear, the applicant has not been granted refugee status in the past, the applicant does not have neither relatives, who are permanently residents in that country, nor ethnic or cultural ties with that country, it is concluded that the he/she does not have connection with that country under which it would be reasonable for him/her to move to it”.<sup>581</sup>

It should be noted, however, that even though the Asylum Service has not considered Turkey as a safe third country for non-Syrian applicants, EASO caseworkers systematically issue opinions recommending that these cases be dismissed inadmissible on the basis of the “safe third country” concept.

As noted in a comparative research issued by ECRE in 2019, the overwhelming majority of EASO opinions seen by ECRE recommend inadmissibility for non-Syrians on the basis that Turkey is a safe third country for them, whereas the Asylum Service overturns the opinions and declares the applications admissible without exception. There is mutual acknowledgment that the examination of the safe third country concept is a redundant step in “merged procedure” cases, and the Asylum Service is in favour of forgoing the admissibility assessment for these cases. Nonetheless, EASO does not intend to change its practice or to revisit the instructions given to Caseworkers. This is seen as a political priority that cannot

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<sup>580</sup> Information provided by the Asylum Service, 17 February 2020.

<sup>581</sup> Decisions on file with the author.

be revisited at operational level.<sup>582</sup> As mentioned this could also be seen as an evidence of the pressure Turkey to be qualified as a safe third country for Syrians and non-Syrians like.<sup>583</sup>

## 1.2. Connection criteria

Article 86(1)(f) IPA requires there to be a connection between the applicant and the “safe third country”, which would make return thereto reasonable. Whereas no further guidance was laid down in previous legislation<sup>584</sup> as to the connections considered “reasonable” between an applicant and a third country,<sup>585</sup> the IPA has introduced further detail in the determination of such a connection. Transit through a third country may be considered as such a connection in conjunction with specific circumstances such as:<sup>586</sup>

- a. Length of stay;
- b. Possible contact or objective and subjective possibility of contact with the authorities for the purpose of access to the labour market or granting a right to residence;
- c. Stay prior to transit e.g. long-stay visits or studies;
- d. Presence of relatives, including distant relatives;
- e. Existence of social, professional or cultural ties;
- f. Existence of property;
- g. Connection to a broader community;
- h. Knowledge of the language concerned;
- i. Geographical proximity to the country of origin.

The proposed article attempts to incorporate into Greek law the decision of the Plenary Session of the Council of State No 2347-2348/2017, which ruled on the resignation of Turkey as a safe third country for Syrian citizens. However, in view of the strong minority of 12 members out of a total of 25 advocating for the referral of a preliminary question to the Court of Justice of the European Union, the judgment of the majority of the Plenary Session of the Council of State cannot be regarded as a reliable case-law, neither at a national, nor at European and International level, so as to be integrated in Greek law. It should be noted that among the issues raised in the Plenary Session, the issue of the applicant's safe connection with the third country was of particular concern as well as whether the applicant's simple transit through that country was sufficient in this respect, in combination with certain circumstances, such as the duration of their stay there and the proximity to their country of origin. Said provision adopts uncritically the rationale of the majority of the Plenary Session, despite the strong minority.

The compatibility of said provision with the EU *acquis* should be further assessed, in particular by taking into consideration the recent CJEU Decision, C-564/18 (19 March 2020) in which the Court ruled that “the transit of the applicant from a third country cannot constitute as such a valid ground in order to be considered that the applicant could reasonably return in this country”.<sup>587</sup>

Moreover, as no provision on the methodology to be followed by the authorities in order to assess whether a country qualifies as a “safe third country” for an individual applicant, the compatibility of national legislation with Art. 38 of the Directive 2013/32/EU should be assessed, in particular under the light of

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<sup>582</sup> ECRE, The role of EASO operations in national asylum systems, An analysis of the current European Asylum Support Office (EASO) Operations involving deployment of experts in asylum procedures at Member State level, 29 November 2019, available at: <https://bit.ly/2VxeDNX>, 12 and 26; see also European Court of Auditors, Asylum, Relocation and Returns of migrants: Time to step up action to address disparities between objectives and results, available at: <https://bit.ly/3aclLVs>, p. 39.

<sup>583</sup> Amnesty International, *Greece: Lives on hold – Update on situation of refugees and migrants on the Greek islands*, EUR25/6745/2017, 14 July 2017, available at: <http://bit.ly/2wuiiSx>, 4.

<sup>584</sup> Article 56(1)(f) L 4375/2016.

<sup>585</sup> Article 56(1)(f) L 4375/2016.

<sup>586</sup> Article 86(1)(f) IPA.

<sup>587</sup> Article 86(1)(f) IPA.

and the recent case law of the CJEU<sup>588</sup>. To this regard, it should also be also mentioned that the lack of a “methodology” provided by national law, could render the provision non-applicable.<sup>589</sup>

In practice, as it appears from first instance inadmissibility decisions issued to Syrian nationals, to the knowledge of GCR, the Asylum Service holds that the fact that an applicant would be subject to a temporary protection status upon return is sufficient in itself to establish a connection between the applicant and Turkey, even in cases of very short stays and in the absence of other links.<sup>590</sup>

Respectively, the Appeals Committees find that the connection criteria can be considered established by taking into consideration *inter alia* the “large number of persons of the same ethnicity” living in Turkey, the “free will and choice” of the applicants to leave Turkey and “not organize their lives in Turkey”, “ethnic and/or cultural bonds” without further specification, the proximity of Turkey to Syria, and the presence of relatives or friends in Turkey without effective examination of their status and situation there. Additionally, in line with the 2017 rulings of the Council of State,<sup>591</sup> transit from a third country, in conjunction with *inter alia* the length of stay in that country or the proximity of that country to the country of origin), is also considered by second instance decisions as sufficient for the fulfillment of the connection criteria. It should be recalled that in the case presented before the Council of State where the Court found that the connection criteria were fulfilled, that applicants had stayed in Turkey for periods of one month and two weeks respectively.

As mentioned above, as far as GCR is aware, no second instance decision issued in 2019 regarding Syrian applicants examined under the safe third country concept has found that the safe third country requirements, including the connection criteria, were not fulfilled.

To GCR knowledge, there have been only two Appeals Committee’s Decision, issued in 2020, in cases supported by GCR, that reversed the first instance inadmissible decisions and in which the Appeals Committee accepted the appeal and declared them as admissible, in particular on the ground that the connection criteria were not fulfilled. These cases concerned Syrian family with minor child/children of Kurdish origin. The Committee considered that the safe third country concept with regards Turkey could not be applied in these cases, on the basis that the connection requirement was not satisfied. The Committee took into consideration the short stay of the applicants in Turkey (10 days and 15 days respectively), the lack of supportive network, the lack of any living or professional ties in that country and the involvement of Turkey in the Syrian war, due to “any tie of the applicants with said country has been destroyed”.<sup>592</sup>

### 1.3. Procedural safeguards

Where an application is dismissed as inadmissible on the basis of the “safe third country” concept, the asylum seeker must be provided with a document informing the authorities of that country that his or her application has not been examined on the merits.<sup>593</sup> This guarantee is complied with in practice.

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<sup>588</sup> CJEU, Case C-564/18, *LH v Bevándorlási és Menekültügyi Hivatal*, 19 March 2020; see Refugee Support Aegean, Comments on the Reform of the International Protection Act, <https://bit.ly/3dLzGUt>, p.14

<sup>589</sup> CJEU, Case C-528/15, *Policie ČR, Krajské ředitelství policie Ústeckého kraje, odbor cizinecké policie v Salah Al Chodor*, 15 March 2017; see Refugee Support Aegean, Comments on the Reform of the International Protection Act, *idem*.

<sup>590</sup> Note that the decision refers to the applicant’s “right to request an international protection status”, even though persons under temporary protection are barred from applying for international protection, see Tempalte Decision in AIDA, Country Report Turkey, 2017 Update, March 2018.

<sup>591</sup> Council of State, Decision 2347/2017, 22 September 2017, para 62; Decision 2348/2017, 22 September 2017, para 62. Note the dissenting opinion of the Vice-President of the court, stating that transit alone cannot be considered a connection, since there was no voluntary stay for a significant period of time.

<sup>592</sup> Decision on file with the author.

<sup>593</sup> Article 56(2) L 4375/2016 and Article 86(4) IPA.



## 2. First country of asylum

The “first country of asylum” concept is a ground for inadmissibility (see [Admissibility Procedure](#) and [Fast-Track Border Procedure](#)).

According to Article 55 L 4375/2016, a country shall be considered to be a “first country of asylum” for an applicant provided that he or she will be readmitted to that country, if the applicant has been recognised as a refugee in that country and can still enjoy of that protection or enjoys other effective protection in that country, including benefiting from the principle of *non-refoulement*. This is also the content of Article 85 IPA, in force since 1 January 2020. The “first country of asylum” concept is not applied as a stand-alone inadmissibility ground in practice. No application was rejected solely on this ground in 2019.<sup>594</sup>

## 3. Safe country of origin

According to Article 87(1) IPA, in force since January 2020, safe countries of origin are:

- (a) Those included in the common list of safe countries of origin by the Council of the EU; and
- (b) Third countries, in addition to those of case (a), which are included in the national list of safe countries of origin and which shall be established and apply for the examination of applications for international protection and published in accordance with Article 87 paragraph 5, issued by a Joint Ministerial Decision by the Ministers of Citizen Protection and Foreign Affairs, following a recommendation of the Director of the Asylum Service.<sup>595</sup>

A country shall be considered as a “safe country of origin” if, on the basis of legislation in force and of its application within the framework of a democratic system and the general political circumstances, it can be clearly demonstrated that persons in these countries do not suffer persecution, generally and permanently, nor torture or inhuman or degrading treatment or punishment, nor a threat resulting from the use of generalised violence in situations of international or internal armed conflict.<sup>596</sup>

To designate a country as a “safe country of origin”, the authorities must take into account *inter alia* the extent to which protection is provided against persecution or ill-treatment through:<sup>597</sup>

- ❖ The relevant legal and regulatory provisions of the country and the manner of their application;
- ❖ Compliance with the ECHR, the International Covenant on Civil and Political Rights (ICCPR), namely as regards non-derogable rights as defined in Article 15(2) ECHR, the Convention against Torture and the Convention on the Rights of the Child;
- ❖ Respect of the *non-refoulement* principle in line with the Refugee Convention; and
- ❖ Provision of a system of effective remedies against the violation of these rights.

A country may be designated as a “safe country of origin” for a particular applicant only if, after an individual examination of the application, it is demonstrated that the applicant (a) has the nationality of that country or is a stateless person and was previously a habitual resident of that country; and (b) has not submitted any serious grounds for considering the country not to be a safe country of origin in his or her particular circumstances and in terms of his or her qualification as a beneficiary of international protection.<sup>598</sup> The “safe country of origin” concept is a ground for applying the [Accelerated Procedure](#). Until the implementation of IPA, there was no national or EU common list of safe countries. Therefore, the rules relating to safe countries of origin in Greek law had not been applied in practice and there had been no reference or interpretation of the abovementioned provisions in decision-making practice.

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<sup>594</sup> Information provided by the Asylum Service, 26 March 2019.

<sup>595</sup> Article 87(5) IPA

<sup>596</sup> Article 87(3) IPA.

<sup>597</sup> Article 87(4) IPA.

<sup>598</sup> Article 87(2) IPA.

However, following a joint Ministerial Decision issued on 31 December 2019,<sup>599</sup> 12 countries have been designated as safe countries of origin. These are Ghana, Senegal, Togo, Gambia, Morocco, Algeria, Tunisia, Albania, Georgia, Ukraine, India and Armenia.

According to Art. 86(8) IPA, the asylum applications by applicants for international protection, coming from “safe countries of origin”, are examined under the Accelerated Procedure.

## G. Information for asylum seekers and access to NGOs and UNHCR

### 1. Provision of information on the procedure

#### Indicators: Information on the Procedure

3. Is sufficient information provided to asylum seekers on the procedures, their rights and obligations in practice?  Yes  With difficulty  No
2. Is tailored information provided to unaccompanied children?  Yes  No

Article 41 L.4375/2016 provided, *inter alia*, that applicants should be informed, in a language which they understand and in a simple and accessible manner, on the procedure to be followed, their rights and obligations. This provision is repeated by Art. 69(2) IPA.

The Asylum Service has produced an informational leaflet for asylum seekers, entitled “Basic Information for People Seeking International Protection in Greece”, available in 20 languages.<sup>600</sup> Moreover, the Asylum Service provides:

- Information in 18 languages on its website;<sup>601</sup>
- A telephone helpline with recorded information for asylum seekers in 10 languages;
- A telephone helpline by which applicants can receive individual information, accessible for some hours daily;
- Information on the asylum procedure through 10 videos in 7 languages;<sup>602</sup>
- A mobile application called “Asylum Service Application” with information on the procedure;<sup>603</sup> and
- An illustrated booklet with information tailored to asylum-seeking children, available in 6 languages.<sup>604</sup>

Additionally, a number of actors are engaged in information provision concerning the asylum procedure.

<sup>599</sup> Joint Ministerial Decision No 1302/20.12.2019, Gov. Gazette 4907/B/31.12.2019.

<sup>600</sup> Asylum Service, *Basic Information for People Seeking International Protection in Greece*, June 2013, available at: <http://bit.ly/1Wuhzb7>.

<sup>601</sup> Asylum Service, Information in 18 languages, available at: [http://asylo.gov.gr/?page\\_id=159](http://asylo.gov.gr/?page_id=159).

<sup>602</sup> Asylum Service, *Audiovisual information material on the Asylum Procedure*, available at: <https://bit.ly/2O9CxeV>.

<sup>603</sup> Government, ‘Η Υπηρεσία Ασύλου και το Χαροκόπειο Πανεπιστήμιο ανακοινώνουν τη δοκιμαστική λειτουργία της εφαρμογής Asylum Service Application’, 3 April 2017, available in Greek at: <http://bit.ly/2Gse9Rv>.

<sup>604</sup> Asylum Service, *I am under 18 and I am seeking asylum in Greece*, available at: [http://asylo.gov.gr/?page\\_id=6210](http://asylo.gov.gr/?page_id=6210).

However, due to the complexity of the procedure and constantly changing legislation and practice, as well as bureaucratic hurdles, access to comprehensible information remains a matter of concern.<sup>605</sup> Given that legal aid is provided by law only for appeal procedures and remains limited in practice (see [Regular Procedure: Legal Assistance](#)), applicants often have to navigate the complex asylum system on their own, without sufficient information.

For example, as noted by FRA, applicants on the Eastern Aegean islands “still have only limited understanding of the asylum procedure and lack information on their individual asylum cases”.<sup>606</sup> Moreover the lack of communication between different authorities on the islands and the frequent changes in the procedure<sup>607</sup> have also an impact on the ability of asylum seekers to receive proper information.

For those detained and due to the total lack of sufficient interpretation services provided in detention facilities, access to information is even more limited. As observed in the preliminary findings of the UN Working Group on Arbitrary Detention, published in December 2019, following the group’s visit to Greece, no information is provided by the police to the detainees on their right to apply for international protection or the procedural stages, neither on the detention time limits. Furthermore, the detention decisions are only drafted in Greek and most PRDCs do not have regular interpretation services for most languages<sup>608</sup>. These finding are corroborated by the 2019 CPT Report, following the visit of the Delegation in April 2018 in Greece. According to the CPT, “the delegation met again a large number of foreign nationals in the pre-removal centres visited who complained that the information provided was insufficient – particularly concerning their (legal) situation and length of detention – or that they were unable to understand this information. This was partly due to the complex legal framework which allowed for their detention on numerous grounds”.<sup>609</sup> These finding are repeated in the report issued in 2020 following the 2019 visit of the Delegation. As noted by the CPT, “[w]hile a two-page information leaflet (Δ-33 form) detailing the rights of detained persons was generally available and pinned to the wall in various languages in most police stations visited, none of the persons interviewed by the CPT’s delegation had obtained a copy of it. The CPT’s delegation also received numerous complaints by foreign national detainees who stated that they had not been informed of their rights in a language they could understand and that they had signed documents in the Greek language without knowing their content and without having been provided with the assistance of an interpreter. The CPT once again reiterates”.<sup>610</sup>

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<sup>605</sup> See e.g. the Asylum Service flowchart on the asylum procedure following the EU-Turkey statement at: <http://bit.ly/2DpZms5>.

<sup>606</sup> Update of the 2016 Opinion of the European Union Agency for Fundamental Rights on fundamental rights in the ‘hotspots’ set up in Greece and Italy, February 2019, available at: <https://bit.ly/2KyCqrQ>, p. 36.

<sup>607</sup> GHM et al., No End In Sight: The mistreatment of asylum seekers in Greece, available at: <https://bit.ly/3eSuNdk>.

<sup>608</sup> UN Working Group on Arbitrary Detention, Preliminary Findings from its visit to Greece (2 - 13 December 2019), available at <https://bit.ly/3aKJvQB>.

<sup>609</sup> Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 19 April 2018 The Greek Government has requested, CPT/Inf (2019) 4, February 2019.

<sup>610</sup> CPT, Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 28 March to 9 April 2019, CPT/Inf (2020) 15, April 2020, para. 100.

## 2. Access to NGOs and UNHCR

### Indicators: Access to NGOs and UNHCR

1. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice?  Yes  With difficulty  No
2. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice?  Yes  With difficulty  No
3. Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice?  Yes  With difficulty  No

Access of NGOs to Reception and Identification Centres, camps on the mainland and pre-removal detention facilities is subject to prior permission by the competent authorities. UNHCR is present in **Athens, Lesvos, Chios, Samos, Kos, Leros, Rhodes, Thessaloniki and Ioannina**, and UNHCR teams cover through physical presence, field missions and *ad hoc* visits the sites in their area of responsibility.<sup>611</sup> Moreover, a UNHCR team present at the RIC of Fylakio (**Evros**) at the Greek-Turkish land border helps asylum seekers who have recently arrived at the RIC. They ensure asylum seekers are identified properly and that unaccompanied children and people with specific needs are directed to appropriate services.<sup>612</sup>

Access of asylum seekers to NGOs and other actors depends on the situation prevailing on each site, for instance overcrowding, in conjunction with the availability of human resources.

As reported, in Samos legal aid organisations are often prohibited from entering the camp, making it difficult to accompany beneficiaries to their interview, as the GAS office is located inside the RIC on the island.<sup>613</sup> Moreover, during 2019, GCR faced a number of obstacles in accessing the Fylakio RIC (Evros).

## H. Differential Treatment of specific nationalities in the procedure

### Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded?  Yes  No  
❖ If yes, specify which: Syria
2. Are applications from specific nationalities considered manifestly unfounded?<sup>614</sup>  Yes  No  
❖ If yes, specify which:

### 1. Syria fast-track

Fast-track processing under the regular procedure has been applied since 23 September 2014 for Syrian nationals and stateless persons with former habitual residence in Syria (see section on **Regular Procedure: Fast-Track Processing**). In 2019, a total of 3,690 positive decisions were issued under this procedure.<sup>615</sup> The Syria fast-track procedure is available only for Syrian nationals and stateless persons with former habitual residence in Syria who entered the Greek territory before the entry into force of the EU-Turkey Statement or entering the Greek territory through the Greek-Turkish land borders. *A contrario*

<sup>611</sup> UNHCR, *About UNHCR in Greece*, available at: <https://help.unhcr.org/greece/about-unhcr-in-greece/>.

<sup>612</sup> UNHCR, *Factsheet: Greece*, December 2019, available at: <https://bit.ly/3gmRTtV>.

<sup>613</sup> No End In Sight: The mistreatment of asylum seekers in Greece, available at: <https://bit.ly/36vxj5L>.

<sup>614</sup> Whether under the "safe country of origin" concept or otherwise.

<sup>615</sup> Information provided by the Asylum Service, 26 March 2019.

applications of those arrived on the islands after 20 March 2016 are examined under the [Fast-Track Border Procedure](#).

## 2. Fast-track border procedure on the islands

As mentioned in [Fast-Track Border Procedure](#), the implementation of the EU-Turkey statement pursuant to Article 60(4) L 4375/2016, now replaced by Article 90(3) IPA, has varied depending on the nationality of the applicants concerned. In particular and during 2019:

- Applications by **Syrian** asylum seekers are examined on admissibility on the basis of the [Safe Third Country](#) concept, with the exception of Dublin cases and vulnerable applicants who are referred to the regular procedure;
- Applications by non-Syrian asylum seekers from countries with a recognition rate **below 25%** are examined only on the merits;
- Applications by non-Syrian asylum seekers from countries with a recognition rate **over 25%** are examined on both admissibility and merits (“merged procedure”).

## Reception Conditions

In May 2018, L 4540/2018 transposed the recast Reception Conditions Directive into national law, almost three years after the transposition deadline set by the Directive. In 2019 L 4540/2018 has been replaced by the IPA, which entered into force on 1 January 2020.

L 4540/2018 reformed the authorities responsible for the reception of asylum seekers. Further reform was introduced following the national election as of July 2019. In 2018, the Reception and Identification Service (RIS) and the Directorate for the Protection of Asylum Seekers (DPAS) within the Secretariat General of Migration Policy under the Ministry of Migration Policy (MoMP), where relevant, have been appointed as the responsible authorities for reception.<sup>616</sup>

Following the merge of the MoMP with the Ministry of Citizen Protection (MoCP) and the transfer of responsibility for migration and asylum policy to the MoCP by the new Government elected in July 2019,<sup>617</sup> both the RIS and DPAS have been transferred within the Secretariat General of Migration Policy, Reception and Asylum, under the new Ministry of Citizen Protection. On 15 January 2020, the MoMP has been reinstalled (Ministry of Migration and Asylum- MoMA). The SG of Migration Policy, Reception and Asylum, as well as the Special Secretariat on Reception, alongside relevant Services, have been transferred under the new MoMA.<sup>618</sup>

The Directorate General for Social Solidarity (DGSS) of the Ministry of Labour and Social Affairs<sup>619</sup> has been appointed as the responsible authority for the protection, including the provision of reception conditions, of unaccompanied and separated minors.<sup>620</sup> More precisely, through its Directorate for the Protection of Unaccompanied Minors,<sup>621</sup> the National Centre for Social Solidarity (*Εθνικό Κέντρο Κοινωνικής Αλληλεγγύης*, EKKA), under the supervision of the Ministry of Labour and Social Affairs receives and processes referrals for the accommodation of unaccompanied and separated children.

Moreover, the UNHCR accommodation scheme as part of the “ESTIA” programme, in collaboration with DPAS, also received and processed relevant referrals for vulnerable asylum seekers eligible to be hosted under the scheme in 2019.<sup>622</sup>

As of the 1<sup>st</sup> of January 2020, when the IPA entered into force, the relevant provisions of L 4540/2018 have been repealed. However, no changes have taken place with respect to the competencies of the aforementioned authorities. As per article 41(h) IPA, the RIS and DPAS remain responsible for reception, while article 60(3) IPA maintains DGSS as the competent authority for the protection of unaccompanied minors, while explicitly referring to the latter’s collaboration with EKKA “or other authorities based on their competencies”, towards this purpose.

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<sup>616</sup> Article 3(b) L 4540/2018.

<sup>617</sup> P.D. 81/2019, Gov. Gazette A' 119/08.07.2019, 'Establishment, merger, renaming and abolition of Ministries and definition of their responsibilities - Transfer of services and responsibilities between Ministries'; P.D. 84/2019, Gov. Gazette A' 123/17.07.2019, 'Establishment and abolition of General Secretariats and Special Secretariats/Single Administrative Sections of Ministries'.

<sup>618</sup> P.D. 4/2020, Gov. Gazette 4/A/15-1-2020.

<sup>619</sup> Formerly under the Ministry of Labour, Social Security and Social Solidarity, which was renamed following the July 2019 reforms introduced through P.D. 81/2019.

<sup>620</sup> Article 22(3) L 4540/2018.

<sup>621</sup> Established with article 27(1) of L. 4554/2018.

<sup>622</sup> As per article 6 (3) of [Ministerial Decision 6382/19](#) on Defining the framework for the implementation of the financial allowance and accommodation programme 'ESTIA', which was issued on 12 March 2019 by the (former) Minister of Migration Policy, referrals to the ESTIA accommodation scheme are made in collaboration with the Department for the Management of Accommodation Requests of the DPAS.

## A. Access and forms of reception conditions

### 1. Criteria and restrictions to access reception conditions

#### Indicators: Criteria and Restrictions to Reception Conditions

1. Does the law make material reception conditions to asylum seekers in the following stages of the asylum procedure?
- |                               |   |   |                             |
|-------------------------------|---|---|-----------------------------|
| ❖ Regular procedure           | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions            | <input type="checkbox"/> No |
| ❖ Dublin procedure            | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions            | <input type="checkbox"/> No |
| ❖ Admissibility procedure     | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions            | <input type="checkbox"/> No |
| ❖ Border procedure            | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Fast-track border procedure | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Accelerated procedure       | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions            | <input type="checkbox"/> No |
| ❖ Appeal                      | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions            | <input type="checkbox"/> No |
| ❖ Onward appeal               | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions            | <input type="checkbox"/> No |
| ❖ Subsequent application      | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions            | <input type="checkbox"/> No |
2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?  Yes  No

Former Article 17 of L 4540/2018, and now article 55(1) IPA, provide that the responsible authority for the reception of asylum seekers in cooperation with competent government agencies, international organisations and certified social actors shall ensure the provision of reception conditions. These conditions must “secure an adequate standard of living for asylum seekers that ensures their subsistence and promotes their physical and mental health, based on the respect of human dignity”. As per the same article, the same standard of living is guaranteed for asylum seekers in detention. Special care is provided for those with special reception needs.<sup>623</sup>

The law foresees that the provision of all or part of the material reception conditions depends on asylum seekers' lack of employment or lack of sufficient resources to maintain an adequate standard of living.<sup>624</sup> The latter is examined in connection with the financial criteria set for eligibility for the Social Solidarity Benefit (*Κοινωνικό Επίδομα Αλληλεγγύης*, ΚΕΑ).<sup>625</sup> The law also provides that reception conditions can be reduced or withdrawn if it is established that the applicant has concealed his or her financial means, in line with Article 20(3) of the Directive.<sup>626</sup>

### 2. Forms and levels of material reception conditions

#### Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial allowance/vouchers granted to single adult asylum seekers as of 31 December 2019 (in original currency and in €): €150 (€90 if accommodation is catered)

Material reception conditions may be provided in kind or in the form of financial allowances.<sup>627</sup> According to former Article 18(1) L 4540/2018, and now Article 56(1) IPA, where housing is provided in kind, it should take one or a combination of the following forms:

<sup>623</sup> Article 17(1) of L. 4540/2018, which as of 1 January 2020 has been replaced by article 55(1) IPA, which maintains the same standards, transposing word-for-word the provisions of article 17 (2) of the (recast) Reception Directive.

<sup>624</sup> Article 17(3) of L. 4540/2018, which has been replaced by article 55(3) IPA without amendments.

<sup>625</sup> Article 235 L 4389/2016.

<sup>626</sup> Article 19(3) L 4540/2018, which was replaced by article 57(3) IPA, which provides that “The Competent reception Authority shall discontinue access to material reception conditions when it is established that the applicant has concealed financial resources and has consequently taken advantage in an unfair way of the material reception conditions.”

<sup>627</sup> Article 17(1) L 4540/2018, replaced by article 55(1) IPA).

- a. Premises used for the purpose of housing applicants during the examination of an application for international protection made at the border or in transit zones;
- b. Accommodation centres, which can operate in properly customised public or private buildings, under the management of public or private non-profit entities or international organisations;
- c. Private houses, flats and hotels, rented for the purposes of accommodation programmes implemented by public or private non-profit entities or international organisations.

In all cases, the provision of housing is under the supervision of the competent reception authority, in collaboration, where appropriate, with other competent state bodies. The law provides that the specific situation of vulnerable persons should be taken into account in the provision of reception conditions.<sup>628</sup>

In practice, a variety of accommodation schemes remain in place as of the end of 2019. These include large-scale camps, initially designed as emergency accommodation facilities, hotels, apartments and NGO-run facilities (see [Types of Accommodation](#)).

UNHCR provides cash assistance in Greece as part of the “ESTIA” programme. The cash card assistance programme is being implemented throughout Greece. In December 2019, UNHCR collaborated with the International Federation of Red Cross and Red Crescent Societies (IFRC) and Catholic Relief Services (CRS) for the implementation of the cash assistance programme.

Eligibility for the cash card assistance programme is assessed on the basis of a person’s date of arrival, legal status and current location. Persons should:<sup>629</sup>

- Have arrived after 1 January 2015;
- Have been registered by the Greek authorities and continue to reside in the country;
- Hold either a pre-registration or full registration document or any other valid official document issued by the Greek authorities;
- Be above the age of 18;
- Live in designated sites, in rented accommodation or registered in the location being issued cards, thereby making it difficult and/or excluding refugees living in informal settlements or who are homeless from accessing the programme;
- Not be employed by an NGO or UN agency; and
- Not be employed and receiving remuneration.

Asylum seekers remaining in detention are excluded from the programme.<sup>630</sup>

In December 2019, 90,537 eligible refugees and asylum seekers (45,451 families) received cash assistance in Greece, in 116 locations, marking a significant 43% increase of the programme’s beneficiaries, compared to the same period in 2018 (63,051). Since April 2017, 159,222 eligible individuals have received cash assistance in Greece at least once.

Of the 90,537 individuals who received cash assistance in December 2019, 15,500 have international protection in Greece (39.6% increase compared to December 2018). Out of 45,451 families, 22% were women, 40% men and 38% children. 31% of all who received cash assistance in December 2019 were families of five members or more and a further 32% were single adults. The majority of individuals in the cash assistance scheme were from Afghanistan (31%), followed by Syrians (27%) and applicants from Iraq (13%) and the Democratic Republic of Congo (5%).

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<sup>628</sup> Article 20(1) L 4540/2018, replaced by article 58(1) IPA).

<sup>629</sup> UNHCR, *The Greece Cash Alliance*, 24 November 2017, available at: <http://bit.ly/2oi4Bkd>.

<sup>630</sup> Article 3(2) of [Ministerial Decision 6382/19](#) on Defining the framework for the implementation of the financial allowance and accommodation programme ‘ESTIA’



Asylum seekers and refugees receiving cash assistance reside in 116 locations throughout Greece. The vast majority, however, are located in **Attica** (32%), the **islands** (33.2%),<sup>631</sup> and **Central Macedonia** (17%).

The amount distributed to each household is proportionate to the size of the family and ranges between €90 for single adults in catered accommodation to €550 for a family of seven in self-catered accommodation.<sup>632</sup>

In addition to the fact that cash assistance preserves refugees' dignity and facilitates the process of regaining an autonomous life, by inter alia allowing them to choose what they need most, the programme has also had a significant, positive impact on local communities, as this assistance is eventually injected into the local economy, family shops and service providers. Based on the programme's beneficiaries, more than €8.7 million in cash assistance were expected to be injected into the local economy in December 2019.<sup>633</sup> For the whole of 2019, this amounted to a total of €89.1 million, or to an average of approximately €6.8 million per month.<sup>634</sup>

### 3. Reduction or withdrawal of reception conditions

#### Indicators: Reduction or Withdrawal of Reception Conditions

1. Does the law provide for the possibility to reduce material reception conditions?  
 Yes  No
2. Does the legislation provide for the possibility to withdraw material reception conditions?  
 Yes  No

Reception conditions may be reduced or withdrawn where the applicant:<sup>635</sup>

- a. Abandons the place of residence determined by the competent authority without informing it or, if requested, without permission; or
- b. Does not comply with reporting duties or with requests to provide information or to appear for personal interviews concerning the asylum procedure during a reasonable period laid down in national law; or
- c. Has lodged a [Subsequent Application](#);
- d. Has concealed his or her resources and illegitimately takes advantage of material reception conditions; or
- e. Seriously breaches the house rules of the reception centre, in particular by demonstrating violent behaviour.

Moreover, material reception conditions may be reduced, in cases where the competent reception authority can establish that the applicant, for no justifiable reason, has not lodged an application for international protection as soon as reasonably practicable after arrival on the Greek territory.<sup>636</sup>

The RIS or the Directorate for the Protection of Asylum Seekers take a decision following an individualised assessment and taking into account the applicant's vulnerability.<sup>637</sup> The procedure is laid down in the General Regulation of Reception Facilities under the responsibility of the RIS (*Γενικός Κανονισμός*

<sup>631</sup> Includes Lesbos (17%), Chios (4%), Samos (6%), Leros (2%), Kos (3%), Rhodes (0.2%) and Crete (1%).

<sup>632</sup> UNHCR, *Cash Assistance Update* (December 2019), 16 January 2020, available at: <https://bit.ly/30LLz7N>.

<sup>633</sup> UNHCR, *Factsheet: Greece*, December 2018, available at: <https://bit.ly/2t6YKQD>.

<sup>634</sup> The data has been collected from the monthly factsheets issued by UNHCR in 2019 on the situation in Greece. They can be found at: <https://bit.ly/37Ng5kd>.

<sup>635</sup> Article 19(1), (3) and (4) L 4540/2018, now replaced by article 57(1), (3) and (4) IPA).

<sup>636</sup> Article 19(2) L 4540/2018, now replaced by article 57(2) IPA), which provides that "The competent reception Authority shall reduce material reception conditions when it ascertains that the applicant has without justifiable cause not applied for international protection as soon as possible after their arrival in the Greek territory").

<sup>637</sup> Article 57(5) IPA.

Λειτουργίας Δομών Φιλοξενίας υπηκόων τρίτων χωρών που λειτουργούν με μέριμνα της Υπηρεσίας Πρώτης Υποδοχής) and the General Regulation for the Operation of Reception and Identification Centres and Mobile Reception and Identification Units (Γενικός Κανονισμός Λειτουργίας Κέντρων Υποδοχής και Ταυτοποίησης και Κινητών Μονάδων Υποδοχής και Ταυτοποίησης) and foresees: (a) an oral recommendation; followed by (b) a written warning; followed by (c) a withdrawal decision.<sup>638</sup>

No data are available on decisions reducing or withdrawing material reception conditions.

#### 4. Freedom of movement

##### Indicators: Freedom of Movement

1. Is there a mechanism for the dispersal of applicants across the territory of the country?  
 Yes  No
2. Does the law provide for restrictions on freedom of movement?  
 Yes  No

Asylum seekers may move freely within the territory of Greece or the area assigned by a regulatory (κανονιστική) decision of the Minister of Citizen Protection (formerly, the Minister of Migration Policy).<sup>639</sup> Restriction of freedom movement within a particular geographical area should not affect the inalienable sphere of private life and should not hinder the exercise of rights provided by the law.<sup>640</sup>

Following the entry into force of the IPA, on 1 January 2020, asylum seekers' freedom of movement may be also restricted through assignment to a specific place, when necessary, for the swift processing and effective monitoring of the applications for international protection or for duly justified reasons of public interest or reasons of public order. The limitation is imposed by the Director of the Asylum Service and is mentioned on the asylum seekers' cards.<sup>641</sup>

Applicants are required to notify the competent authorities of any change of their address, as long as the examination of their asylum application is pending.<sup>642</sup>

Finally, applicants have the right to lodge an appeal (προσφυγή) before the Administrative Court against decisions that restrict their freedom of movement.<sup>643</sup> However, as explained below, the remedy provided by this provision is not available in practice.

##### 4.1. The geographical restriction on the Eastern Aegean islands

In practice, the imposition of a restriction on freedom of movement is particularly applied to persons subject to the EU-Turkey statement and the [Fast-Track Border Procedure](#), whose movement is systematically restricted within the island where they have arrived, under a "geographical restriction". As mentioned in [Reception and Identification Procedure](#), the geographical restriction on the given island is imposed both by the Police Authorities and the Asylum Service.

**Imposition of the "geographical restriction" by the Police:** Following an initial "Deportation decision based on the readmission procedure" issued for every newly arrived person upon arrival, a "postponement

<sup>638</sup> Article 18B(2) Ministerial Decision 11.1/6343/25-11-2014, Gov. Gazette, 3295/B/09.12.2014 and article 10(1) Joint Ministerial Decision 1/7433/10-6-2019, Gov. Gazette 2219/B/10.6.2019.

<sup>639</sup> Article 7(1) L 4540/2018, as amended by Article 62 L 4609/2019, and now replaced by Article 45(1) IPA.

<sup>640</sup> *Ibid.*

<sup>641</sup> Article 45(2) IPA.

<sup>642</sup> Article 7(6) L 4540/2018, now replaced by Article 45(6) IPA.

<sup>643</sup> Article 24 L 4540/2018, as amended by Article 5 L 4587/2018, referring to the Code of Administrative Procedure (L 2717/1999). Article 24 L4540/2018 has been replaced by article 112(1) IPA as of the 1<sup>st</sup> of Jan 2020.

of deportation” decision is issued by the Police,<sup>644</sup> by which the person in question is ordered not to leave the island and to reside in the respective RIC “until the issuance of a second instance negative decision on the asylum application”. The automatic issuance of a deportation decision upon arrival against every newly arrived person on the Greek islands is highly problematic, given that the majority of newly arrived persons have already expressed the intention to seek asylum upon arrival, thus prior to the issuance of a deportation decision.<sup>645</sup> Moreover, the decision of the Police which imposes the geographical restriction on the island is imposed indiscriminately, without any prior individual assessment or proportionality test. It is also imposed indefinitely, with no maximum time limit provided by law and with no effective remedy in place.<sup>646</sup>

**Imposition of the “geographical restriction” by the Asylum Service:** The imposition of the geographical restriction on the islands in the context of the asylum procedure was initially based on a June 2017 Decision of the Director of the Asylum Service.<sup>647</sup> This decision was annulled by the Council of State on 17 April 2018, following an action brought by GCR. The Council of State ruled that the imposition of a limitation on the right of free movement on the basis of a regulatory (*κανονιστική*) decision is not as such contrary to the Greek Constitution or to any other provision with overriding legislative power. However, it is necessary that the legal grounds, for which this measure was imposed, can be deduced from the preparatory work for the issuance of this administrative Decision, as otherwise, it cannot be ascertained whether this measure was indeed necessary. That said the Council of State annulled the Decision as the legal grounds, which permitted the imposition of the restriction, could not be deduced neither from the text of said Decision nor from the elements included in the preamble of this decision. Moreover, the Council of State held that the regime of geographical restriction within the Greek islands has resulted in unequal distribution of asylum seekers across the national territory and significant pressure on the affected islands compared to other regions.<sup>648</sup> A new regulatory Decision of the Director of the Asylum Service was issued three days after the judgment and restored the geographical restriction on the Eastern Aegean islands.<sup>649</sup> This Decision was replaced in October 2018 by a new Decision of the Director of the Asylum Service.<sup>650</sup> Following an amendment introduced in May 2019 the competence for issuing the Decision imposing the geographical restriction has been transferred from the Director of the Asylum Service to the Minister of Migration Policy.<sup>651</sup> In June 2019, a decision of the Minister of Migration Policy on the imposition of the geographical restriction has been issued.<sup>652</sup> Following the transfer of the responsibilities of the MoMP to the MoPO and the amendment of the IPA in November 2019, a new decision on the imposition of the geographical limitation has been issued by the Minister of Citizen Protection in December 2019.<sup>653</sup> A new application for annulment was filed by GCR before the Council of State against said Decisions, however the hearing has been since postponed on several occasions and has not taken place by May 2020.

The relevant Decisions on the imposition of the geographical restriction in force during 2019, stated the following:<sup>654</sup>

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<sup>644</sup> Pursuant to Article 78 L 3386/2005.

<sup>645</sup> Article 34(d) L 4375/2016 (replaced by article 2(c) IPA) clarifies that a person who expresses orally or in writing the intention to submit an application for international protection is an asylum seeker.

<sup>646</sup> See e.g. Human Rights Committee, *General Comment No 27 – Article 12 (Freedom of Movement, CCPR/C/21/Rev.1/Add.9*, 2 November 1999, available at: <http://bit.ly/2uG06Fj>.

<sup>647</sup> Asylum Service Director Decision 10464, Gov. Gazette B 1977/7.06.2017.

<sup>648</sup> Council of State, Decision 805/2018, 17 April 2018, EDAL, available at: <https://bit.ly/2GmnbTI>.

<sup>649</sup> Asylum Service Director Decision 8269, Gov. Gazette B 1366/20.04.2018. See GCR and Oxfam, ‘GCR and Oxfam issue joint press release on CoS ruling’, 24 April 2018, available at: <https://bit.ly/2N0Rwqv>.

<sup>650</sup> Asylum Service Director Decision 18984, Gov. Gazette B 4427/05.10.2018.

<sup>651</sup> Art. 7 L.4540/2018 as amended by L. 4609/2019.

<sup>652</sup> Ministerial Decision 13411/2019, Gov. Gazette 2399/B/19.6.2019.

<sup>653</sup> Ministerial Decision 1140/2019, Gov. Gazette 4736/B/20.12.2019.

<sup>654</sup> Asylum Service Director Decision 18984, Gov. Gazette B 4427/05.10.2018 and Ministerial Decision 13411/2019, Gov. Gazette 2399/B/19.6.2019

“1. A restriction on movement within the island from which they entered the Greek territory is imposed on applicants of international protection who enter the Greek territory through the islands of Lesbos, Rhodes, Samos, Kos, Leros and Chios. Said restriction is mentioned on the asylum seekers’ cards.

2. The restriction on movement shall not be imposed or should be lifted for persons subject to the provisions of Articles 8 to 11 of Regulation (EU) No 604/2013 as well as persons belonging to vulnerable groups, according to paragraph 8 of article 14 of Law 4375/2016.”

The Decision of the Minister of Public Order as of December 2019, which regulates the imposition of the geographical restriction since 1 January 2020, states the following:

“1. A restriction on movement within the island from which they entered the Greek territory is imposed on applicants of international protection who enter the Greek territory through the islands of Lesbos, Rhodes, Samos, Kos, Leros and Chios. Said restriction is mentioned on the asylum seekers’ cards.

2. The restriction on movement shall be lifted subject to a decision of the Director of the RIC, which is issued as per the provisions of para. 7, article 39 of L.4636/2019, in cases of

(a) unaccompanied minors,

(b) persons subject to the provisions of Articles 8 to 11 of Regulation (EU) No 604/2013, under the condition that after the take charge request submitted by the Greek Authorities has been accepted by another member State

(c) persons whose applications can reasonably be considered to be well founded and

(d) persons belonging to vulnerable groups or who are in need of special reception conditions according to the provisions of L. 4636/2019, as long as it is not possible to provide them with appropriate support as per what is provided in article 67 of the same Law/IPA (“applicants in need of special procedural guarantees”).

Thus and in line with said Decisions in force during 2019 and since 1 January 2020, the geographical restriction on each asylum seeker who entered the Greek territory through the Eastern Aegean Islands is imposed automatically when the asylum application is lodged before the RAO of **Lesvos, Rhodes, Samos, Leros** and **Chios** and the AAU of **Kos**. The applicant receives an asylum seeker’s card with a stamp on the card mentioning: “Restriction of movement on the island of [...]”. No individual decision is issued for each asylum seeker.

The lawfulness of the aforementioned practice is questionable, *inter alia* for the following reasons:

- No prior individual decision for the imposition of the geographical limitation is issued, as the limitation is imposed on the basis of a regulatory (‘κανονιστική’) Decision of the Minister and no proper justification on an individual basis is provided for the imposition of the restriction of movement on each island, within the frame of the asylum procedure.<sup>655</sup> According to the relevant Decisions, any asylum seeker who enters the Greek territory from **Lesvos, Rhodes, Samos, Leros, Chios** and **Kos** is initially subject to a geographical restriction on said island. The restriction can be lifted only in case that the applicant falls within one of the categories provided by the Ministerial Decision. Consequently, the geographical restriction in the asylum procedure is applied indiscriminately, *en masse* and without any prior individual assessment. The impact of the geographical restriction on applicants’ “subsistence and... their physical and mental health”,<sup>656</sup> on the ability of applicants to fully exercise their rights and to receive reception conditions, by taking into consideration reception conditions prevailing on the islands is not assessed.

<sup>655</sup> Article 7 recast Reception Conditions Directive.

<sup>656</sup> Article 17(2) recast Reception Conditions Directive.

- No time limit or any re-examination at regular intervals is provided for the geographical limitation imposed;
- No effective legal remedy is provided in order to challenge the geographical limitation imposed by the Minister of Citizen Protection, contrary to Article 26 of the recast Reception Conditions Directive. The remedy introduced by the amended Article 24 L 4540/2018 in December 2018 remained illusory, since an individual cannot lodge an appeal pursuant to the Code of Administrative Procedure in the absence of an individual, enforceable administrative act. In addition, no tailored legal aid scheme is provided for challenging such decisions (see [Regular Procedure: Legal Assistance](#)). *A fortiori*, no legal remedy is provided by the IPA to challenge said restriction.

During 2019, and in line with the legal framework in place at that time, the geographical restriction was lifted in the following cases:

- Persons granted international protection have their restriction lifted at the time they receive the positive decision;
- Applicants exempted due to the applicability of the family provisions of the Dublin Regulation have their restriction lifted following the full registration of the application;
- Applicants exempted due to vulnerability, as far as GCR, is aware had their restriction lifted immediately following the full registration of their application or at the time that their vulnerability was identified, even though in the context of speeding-up the asylum procedure and/or as part of measures to decongest the overcrowded island RICs, changes in practices were observed, resulting in vulnerable applicants having to undergo their interview on the island, before being granted access to the Greek mainland.<sup>657</sup>

Since 1 January 2020, the new regulatory framework for the geographical restriction on the islands has significantly limited the categories of applicants for whom the restriction can be lifted. Thus, the implementation of this framework can increase the number of applicants stuck on the Greek islands and further deteriorate the conditions there.

In sum, the practice of indiscriminate imposition of the geographical restriction since the launch of the EU-Turkey Statement has led to significant overcrowding. People are obliged to reside for prolonged periods in overcrowded facilities, where food and water supply have been consistently reported insufficient, sanitation is poor and security highly problematic (see [Conditions in Reception Facilities](#)).

In September and October 2019,<sup>658</sup> the Greek National Commission for Human Rights (GNCHR) reiterated its firm and consistently expressed position on the “immediate termination of the entrapment of the applicants for international protection in the Eastern Aegean islands and the lifting of geographical limitations imposed on them.” It similarly reiterated its key recommendation on “the abolition of the measure of geographical limitation...and the adoption of a provision whereby any geographical limitation shall be based on an individual assessment and be imposed by a reasoned administrative decision, providing also the applicants with a right to effective judicial protection, given the nature of the measure, i.e. the restriction of their freedom of movement.”

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<sup>657</sup> Indicatively, see MSF, *A dramatic deterioration for asylum seekers on Lesbos*, July 2017, available at: <http://bit.ly/2vCJzAF>, p. 3 and AIDA, Country Report Greece, 2018 update, March 2019, p.120.

<sup>658</sup> National Commission for Human Rights, *The GNCHR on the unsettling situation in the Eastern Aegean islands and the recent asylum developments*, 6 September 2019, available at: <https://bit.ly/38wCBhe>, p.2 and National Commission for Human Rights, GNCHR'S Recommendations on refugee protection [annex to GNCHR'S reference report on refugees], October 2019, available at: <https://bit.ly/38xvNjG>.

Respectively, in October 2019, the Council of Europe Commissioner for Human Rights underlined that “[t]he situation of migrants, including asylum seekers, in the Greek Aegean islands has dramatically worsened over the past 12 months. Urgent measures are needed to address the desperate conditions in which thousands of human beings are living” and added that “without lifting the geographical restriction, this plan [transferring of 20,000 applicants from the island to mainland] is unlikely to significantly reduce the overcrowding in the islands”.<sup>659</sup>

Failure to comply with the geographical restriction has serious consequences, including **Detention of Asylum Seekers**, as applicants apprehended outside their assigned island are – arbitrarily – placed in pre-removal detention for the purpose of returning to their assigned island. They may also be subject to criminal charges under Article 182 of the Criminal Code. Moreover, access to asylum is also restricted to those who have not complied with the geographical restriction since, according to the practice of the Asylum Service, their applications are not lodged outside the area of the geographical restriction and/or the applicant in case he or she has already lodged an application, cannot renew the asylum seeker card and the examination is interrupted.

Lastly, as of 1 January 2020, failure to comply with the geographical restriction leads to the rejection of an application as unfounded on its merits, as per article 81 IPA (“implicit withdrawal”). As of the end of January 2020, GCR is aware of a number of cases in Lesbos island, who have been rejected at first instance because the applicants had not complied with the geographical restriction.<sup>660</sup>

## B. Housing

### 1. Types of accommodation

#### Indicators: Types of Accommodation

1. Number of temporary accommodation centres: 30
2. Total number of places in UNHCR accommodation: 25,766
3. Type of accommodation most frequently used in a regular procedure:  
 Reception centre  Hotel or hostel  Emergency shelter  Private housing  Other
4. Type of accommodation most frequently used in an accelerated procedure:  
 Reception centre  Hotel or hostel  Emergency shelter  Private housing  Other

The Greek reception system has been long criticised as inadequate, not least in the *M.S.S. v. Belgium and Greece* ruling of the ECtHR. Subsequent jurisprudence of the ECtHR has also found violations of Article 3 ECHR due to the failure of national authorities to provide asylum seekers with adequate living conditions.<sup>661</sup>

Since mid-2015, when Greece was facing large-scale arrivals of refugees, those shortcomings have become increasingly apparent. The imposition of border restrictions and the subsequent closure of the Western Balkan route in March 2016, resulting in trapping a number of about 50,000 third-country nationals in Greece. This created *inter alia* an unprecedented burden on the Greek reception system.<sup>662</sup>

<sup>659</sup> Council of Europe, “*Greece must urgently transfer asylum seekers from the Aegean islands and improve living conditions in reception facilities*”, 31 October 2019, available at: <https://bit.ly/31eNMZL>.

<sup>660</sup> Information provided by the Greek police and UNHCR in Lesbos, in the context of a field mission between 28-31 January 2020.

<sup>661</sup> ECtHR, *F.H. v. Greece*, Application No 78456/11, Judgment of 31 July 2014; *Al.K. v. Greece*, Application No 63542/11, Judgment of 11 March 2015; *Amadou v. Greece*, Application No 37991/11, Judgment of 4 February 2016; *S.G. v. Greece*, Application No 46558/12, Judgment of 18 May 2017.

<sup>662</sup> See also AIRE Centre and ECRE, *With Greece: Recommendations for refugee protection*, July 2016, 7-8.

Since then, the number of reception places has increased mainly through temporary camps and the UNHCR accommodation scheme. Despite this increase, destitution and homelessness remain a risk, which has been affecting an increasing number of asylum seekers and refugees.

As mentioned by UNHCR in January 2019, “with steady new arrivals reaching the sea and land borders and limited legal pathways out of the country, there is an ever-increasing need for more reception places for asylum-seekers and refugees, especially children who are unaccompanied and other people with specific needs.”<sup>663</sup>

Since then, throughout 2019, more than 70,000 persons arrived on the Greek islands and the mainland, amounting to a 50% increase, compared to 2018 arrivals,<sup>664</sup> thus further impacting on the state’s ability to provide material reception conditions. The situation on the islands remains dire due to the critical overcrowding of the RICs, which in tandem with the lack of necessary provisions and frequently changing practices, facilitate the creation of frequent tensions.

The Reception and Identification Service (RIS) and the Directorate for the Protection of Asylum Seekers (DPAS) within the Secretariat General of Migration Policy, Reception and Asylum under the Ministry of Citizen Protection, where relevant, are appointed as the responsible authorities for the reception of asylum seekers.<sup>665</sup> Additionally, the UNHCR accommodation scheme as part of the “ESTIA” programme receives and processes relevant referrals for vulnerable asylum seekers eligible to be hosted under the scheme in 2019.

The Directorate General for Social Solidarity of the Ministry for Labour and Social Affairs is appointed as the responsible authority for the protection, including provision of reception conditions, of unaccompanied and separated children.<sup>666</sup> EKKA, under the Ministry of Labour and Social Affairs, receives and processes referrals for the accommodation of unaccompanied and separated children (see [Special Reception Needs](#)).

### 1.1. Temporary accommodation centres

As mentioned above, in 2016, in order to address the needs of persons remaining in Greece after the imposition of border restrictions along the so-called Western Balkan route, a number of temporary camps has been created in the mainland in order to increase accommodation capacity.

The law provides a legal basis for the establishment of different accommodation facilities. In addition to [Reception and Identification Centres](#),<sup>667</sup> the Ministry of Economy and the Ministry of Internal Affairs may, by joint decision, establish open Temporary Reception Facilities for Asylum Seekers (*Δομές Προσωρινής Υποδοχής Αιτούντων Διεθνή Προστασία*),<sup>668</sup> as well as open Temporary Accommodation Facilities (*Δομές Προσωρινής Φιλοξενίας*) for persons subject to return procedures or whose return has been suspended.<sup>669</sup> As of 17 December 2019, the sites for the construction of controlled, open and closed facilities, as well as all facilities, including those intended for the accommodation of unaccompanied minors, throughout the Greek territory, is approved by the newly constituted position of the National

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<sup>663</sup> UNHCR, *Factsheet: Greece*, January 2019, available at: <https://bit.ly/2SYh3qr>.

<sup>664</sup> UNHCR, *Factsheet: Greece, December 2019*, available at: <https://bit.ly/37QBhFY>.

<sup>665</sup> Article 41(h) IPA. As of 15 January 2020 and the institution of the Ministry of Migration and Asylum, through P.D. 4/2020, Gov. Gazette 4/A/15.1.20, the Secretariat General of Migration Policy, Reception and Asylum, as well as the Special Secretariat of Reception have been transferred under the competence of the new Ministry.

<sup>666</sup> Article 60(3) IPA.

<sup>667</sup> Article 10(1)-(2) L 4375/2016. The article has not been abolished by the IPA and remains the same.

<sup>668</sup> Article 10(4) L 4375/2016. The article has not been abolished by the IPA and remains the same.

<sup>669</sup> Article 10(5) L 4375/2016. The article has not been abolished by the IPA and remains the same.

Coordinator for the response to and management of the migration-refugee issue (*Εθνικός Συντονιστής για την αντιμετώπιση και διαχείριση του μεταναστευτικού - προσφυγικού ζητήματος*), following recommendations of the competent services.<sup>670</sup>

Notwithstanding these provisions, in 2019 most temporary accommodation centres (i.e. mainland camps) and emergency facilities continue to operate without a prior Ministerial Decision and the requisite legal basis. The only three facilities officially established on the mainland are **Elaionas**,<sup>671</sup> **Schisto** and **Diavata**,<sup>672</sup> with the rest operating without an official manager, through Site Management & Support. The required Ministerial Decisions for the establishment of the Temporary accommodation facilities has been issued on March 2020.<sup>673</sup> Said Decision establishes 28 Temporary Accommodation Facilities across the country.

The referral pathway for placement in these camps entails the engagement of multiple actors, amongst which the RIS, the DPAS, SMS agencies and UNHCR. For instance, applicants identified as homeless and/or living in precarious conditions on the mainland are initially referred to DPAS which, following the assessment of their vulnerability, proceeds with further referring them to UNHCR, for placement in the ESTIA accommodation scheme (high vulnerability), or to the RIS (low vulnerability), which is to then further examine the possibility of their accommodation in a camp.<sup>674</sup>

During 2019, 950 requests from homeless or under precarious living conditions asylum seekers on the mainland were sent from the Directorate for the Protection of Asylum Seekers (DPAS) to the Reception and Identification Service (RIS), for a place in an open accommodation facility on the mainland. Only 55 applicants were finally offered an accommodation place in a facility (5.7%).<sup>675</sup>

Though, there are still no official data available on the capacity and occupancy of these accommodation sites, starting July 2019, data on the totality of mainland camps have started being issued on a monthly basis by IOM:<sup>676</sup>

Occupancy of temporary accommodation centres: December 2019									
Facility	Population	Occupancy	Nationality (%)				Age / Gender		
			Syria	Afg.	Iraq	Other	Men	Women	Children
Alexandreia	628	102.28%	36.57	28.34	26.36	8.73	31%	20%	49%
Andravida	316	101,28%	96.52	-	1.90	1.58	24%	22%	54%
Diavata	980	105.60%	14.18	44.69	24.08	17.04	35%	22%	43%
Doliana	133	103.10%	68.28	-	31.72	-	20%	23%	57%
Drama	365	86.90%	44.9	-	43.3	11.7	25%	19%	56%
Elefsina	189	105%	58.76%	8.25	22.68	10.31	18%	21%	61%
Elaionas	1,839	99.41%	32.79	37.90	7.12	22.17	34%	25%	41%
Filipiada	650	88.32%	28.26	42.08	14.60	12.73	25%	22%	53%

<sup>670</sup> Article 11 (2)(d) of L. 4650/2019, on the Regulation of Issues pertaining to the Ministry of Defence and other matters.

<sup>671</sup> JMD 3/5262, "Establishment of the Open Facility for the hospitality of asylum seekers and persons belonging to vulnerable groups in Eleonas Attica Region", 18 September 2015, Gov. Gazette B2065/18.09.2015; JMD 3.2/6008 "Establishment of the Open Facility for the temporary reception of applicant of international protection", 18 September 2015, Gov. Gazette B' 1940/6.06.2017.

<sup>672</sup> JMD 3/14762, "Establishment of Open Facilities for the Temporary Hospitality of applicant for international protection", Gov. Gazette B' 3720/16.11.2016.

<sup>673</sup> JMD 2945/2020, Establishment of Open Accommodation Facilities for third country nationals who have applied for asylum, Gov. Gazette B' 1016/26.3.2020.

<sup>674</sup> Information provided by DPAS on 14 January 2020.

<sup>675</sup> Idem.

<sup>676</sup> IOM, Improving the Greek Reception System through Site Management Support and Targeted Interventions in Long-Term Accommodation Sites, available at: <https://bit.ly/3dTmgGP>.



Grevena (SMS Hotels)	765	103.10%	57.25	9.41	20.65	12.68	30%	25%	45%
Kato Milia	310	91.18%	51.29	15.81	13.87	19,03	37%	22%	41%
Katsikas	1,064	92.36%	24.55	34.24	15.71	25.48	45%	19%	36%
Kavala	906	73.24%	12.91	62.36	13.47	11.26	24%	21%	55%
Korinthos	751	95.79%	29.05	37.84	6.62	26.49	45%	25%	30%
Koutsochero (Larisa)	1,456	86.77%	36.40	31.94	15.38	16.27	37%	24%	39%
Lagadikia	466	102.19%	34.76	4.51	52.79	7.94	36%	22%	42%
Lavrio	240	89.22%	47.50	23.75	3.75	24.99	39%	22%	39%
Malakasa	1,767	111.20%	-	94	1.4	4.6	41%	21%	38%
Nea Kavala	794	86.97%	16.62	48.61	9.19	25.57	45%	19%	36%
Oinofyta	604	97.26%	75.83	19.70	3.81	0.66	38%	24%	38%
Pirgos SMS facilities	78	97.50%	24.36	62.82	7.69	5.12	-	49%	51%
Ritsona	1,579	59.05%	56.36	16.92	7.12	19.6	35%	24%	41%
Schisto	954	86.73%	27.49	57.94	7.64	6.92	38%	21%	41%
Serres	1,107	65.93%	4.9	-	95.1	-	31%	27%	42%
Skaramagas	2,534	79.29%	48.82%	26.84%	11.92%	12.43%	38%	23%	39%
Thermopiles	428	76.43%	61.68%	-	23.83	14.49	27%	22%	51%
Thiva	824	85.74%	29.25	45.15	15.90	9.71	48%	17%	35%
Vagiochori	771	97.35%	10.25	81.84	1.95	5.96	23%	28%	49%
Veria	454	92.84%	63.44	-	25.53	9.02	27%	26%	47%
Volos	143	95.33%	27.97	-	20.98	51.05	37%	18%	45%
Volvi	1,015	101.50%	29.49	29.74	15.61	25.19	32%	31%	37%
<b>Grand total</b>	<b>24,110</b>		<b>33.75</b>	<b>35.85</b>	<b>17.23</b>	<b>13.17</b>	<b>35%</b>	<b>23%</b>	<b>42%</b>

Source: IOM, Improving the Greek Reception System through Site Management Support and Targeted Interventions in Long-Term Accommodation Sites: Factsheet December 2019, available at: <https://bit.ly/37k71Dg>

## 1.2. UNHCR accommodation scheme

UNHCR started implementing an accommodation scheme dedicated to relocation candidates (“Accommodation for Relocation”) through its own funds in November 2015.<sup>677</sup> Following a Delegation Agreement signed between the European Commission and UNHCR in December 2015,<sup>678</sup> the project was continued and UNHCR committed to gradually establishing 20,000 places in open accommodation, funded by the European Commission and primarily dedicated to applicants for international protection eligible for relocation.

In July 2017, as announced by the European Commission, the accommodation scheme was included in the Emergency Support to Integration and Accommodation (ESTIA) programme funded by DG ECHO, aiming to provide urban accommodation and cash assistance, aiming at hosting up to 30,000 people by the end of 2017. As stated by the UNHCR Representative in Greece in February 2018, the European Commission has provided assurances that funding for the accommodation programme of asylum seekers

<sup>677</sup> UNHCR, *Greece: Accommodation for Relocation Project Factsheet*, 1 July 2016, available at: <http://bit.ly/2INomLG>.

<sup>678</sup> European Commission, ‘European Commission and UNHCR launch scheme to provide 20,000 reception places for asylum seekers in Greece’, IP/15/6316, 14 December 2015.

in apartments will also continue in 2019, probably by DG HOME.<sup>679</sup> The takeover of activities by AMIF, managed by DG HOME, was confirmed in February 2019.<sup>680</sup>

By the end of December 2019, 25,766 places were provided in the accommodation scheme as part of the ESTIA programme, amounting to a decrease of 1,322 places when compared to the same period during 2018 (total of 27,088 places).<sup>681</sup> These were in 4,523 apartments and 14 buildings, in 14 cities and 7 islands across Greece:

UNHCR accommodation scheme: 31 December 2019	
Type of accommodation	Capacity
Total number of places in Greece	25,766
Actual capacity	22,060
Current population	21,620
Occupancy rate	98%

Source: UNHCR, *ESTIA Accommodation Capacity Weekly Update (as of 31 December 2019)*, 3 January 2020, available at: <https://bit.ly/2FoLop2>.

Out of the total of 25,766 places, 1,765 were located on the islands.

In total, since November 2015, 63,940 individuals have benefitted from the accommodation scheme. By the end of December 2019, 21,620 people were accommodated under the scheme, 6,822 of whom were recognised refugees and 14,798 were asylum seekers.

Nearly 51% of the residents are children. The clear majority of those accommodated continued being families with children, with an average family size of four people. More than one in four residents have at least one of the vulnerabilities that make them eligible for the accommodation scheme. Moreover, close to 88% of individuals in the accommodation scheme are Syrians (40%), Iraqis (21%), Afghans (20%), Iranians (3%) and from DRC (2%).<sup>682</sup>

### 1.3. The islands and accommodation in the hotspots

Immediately after the launch of the EU-Turkey Statement on 20 March 2016, Reception and Identification Centres (RIC) –the so-called “hotspot” facilities– were transformed into closed detention facilities due to a practice of blanket detention of all newly arrived persons.<sup>683</sup> Following criticism by national and international organisations and actors, as well as due to the limited capacity to maintain and run closed facilities on the islands with a large population,<sup>684</sup> this practice has largely been abandoned. As a result, RIC on the islands are used mainly as open reception centres.

<sup>679</sup> UNHCR, ‘Interview with UNHCR Representative in Greece on housing programme for asylum-seekers’, 19 February 2018, available at: <http://bit.ly/2sJf6lh>.

<sup>680</sup> European Commission, ‘Greece – End of activation of the Emergency Support Instrument (DG ECHO)’, 13 February 2019, available at: <https://bit.ly/2SII5UV>.

<sup>681</sup> UNHCR, *Accommodation Update (December 2018)*, 10 January 2019, available at: <https://bit.ly/3031pdN>.

<sup>682</sup> UNHCR, *Population breakdown in ESTIA Accommodation Scheme (as of 31 December 2019)*, 31 December 2019, available at: <https://bit.ly/37lxN82>; UNHCR, *Greece – Accommodation Update (December 2019)*, available at: <https://bit.ly/39OhJ6A>.

<sup>683</sup> AIDA, *Country Report Greece, 2016 Update*, March 2017, 100 et seq.

<sup>684</sup> UNHCR, *Explanatory Memorandum to UNHCR’s Submission to the Committee of Ministers of the Council of Europe on developments in the management of asylum and reception in Greece*, May 2017, 10.

Following a controversial press briefing of the Government’s operational plan for responding to the refugee issue, on 20 November 2019,<sup>685</sup> it was announced that the island RICs would be transformed into Closed Reception and Identification Centres that would simultaneously function as Pre-Removal Detention Centres and which would have a capacity of at least 18,000 places. The announcements *inter alia* raised serious concerns and/or were condemned by a wide array of actors, including members of the European Parliament, which addressed an open letter to the Justice and Home Affairs Council, the CoE Commissioner for Human Rights,<sup>686</sup> as well as GCR and other civil society actors,<sup>687</sup> and local communities in Greece, who have since opposed the creation of new centres on the islands.<sup>688</sup>

Notwithstanding this, it should be mentioned that throughout 2019 people residing in the RICs continued being subjected to a “geographical restriction”, based on which they are under an obligation not to leave the island and to reside in the RIC facility (see [Freedom of Movement](#)). Beyond the hotspots, each island has an additional, though limited, number of facilities, *inter alia* operating under the UNHCR accommodation scheme or NGOs for the temporary accommodation of vulnerable groups, including unaccompanied children.

As of 31 December 2019, 41,899 persons remained on the Eastern Aegean islands, of which 305 were in detention in police cells and Pre-Removal Detention Centres (PRDCs). The nominal capacity of reception facilities, including RIC and other facilities, was at 8,125 places. The nominal capacity of the RIC facilities (hotspots) was of 6,178 while 38,423 persons were residing there.

More precisely, the figures reported by the National Coordination Centre for Border Control, Immigration and Asylum, as issued by the General Secretariat for Information and Communication, were as follows:

Accommodation on the Eastern Aegean islands: 31 December 2019								
Island	RIC		UNHCR scheme		EKKA		Other facilities	
	Nominal capacity	Occupancy	Nominal capacity	Occupancy	Nominal capacity	Occupancy	Nominal capacity	Occupancy
Lesvos	2,840	18,615 (655%)	765	658	146	140	-	1,218
Chios	1,014	5,782 (570%)	288	278	18	12	-	-
Samos	648	7,765 (1,200%)	282	275	18	15	-	-
Leros	860	2,496 (290%)	136	113	-	-	120	142
Kos	816	3,765 (461%)	213	189	-	-	-	-
Others			81	56				
<b>Total</b>	<b>6,178</b>	<b>38,423</b>	<b>1,765</b>	<b>1,569</b>	<b>182</b>	<b>167</b>	<b>120</b>	<b>1,360</b>

Source: <http://bit.ly/2GDox7X>; General Secretariat for Information and Communication, *National Situational Picture Regarding the Islands at Eastern Aegean Sea (31/12/2019)*, 1 January 2020, available at: <https://bit.ly/37LOj7A>. The term “other facilities” refers to Kara Tepe on Lesvos (capacity not mentioned) and PIKPA on Leros.

<sup>685</sup> Greek Government, “Political Press Briefing – the Government’s Operational Plan for dealing with the migrant issue”, 20 November 2019, available at: <https://bit.ly/2RO2Kml>.

<sup>686</sup> Council of Europe, “*Commissioner seeks information from the Greek government on its plans to set-up closed reception centres on the Aegean islands*”, 3 December 2019, available at: <https://bit.ly/38X2GX4>.

<sup>687</sup> For instance, see GCR, “*The Greek Authorities announcements on the refugee issue are in contrast to national and international law*”, 21 November 2019, available (in Greek) at: <https://bit.ly/36Q4Oyu>; The Guardian, “*Aid groups condemn Greece over ‘prison’ camps for migrants*”, 25 November 2019, available at: <https://bit.ly/2S4YXzW>.

<sup>688</sup> For instance, see ekathimerini, “*More protests against new island centres on the way*”, 10 January 2020, available at: <https://bit.ly/31fwkEp>.

## 2. Conditions in reception facilities

### Indicators: Conditions in Reception Facilities

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places?  Yes  No
2. What is the average length of stay of asylum seekers in the reception centres? Varies
3. Are unaccompanied children ever accommodated with adults in practice?  Yes  No

The former Article 17(1) L 4540/2018, and now article 55(1) IPA provide that material reception conditions must provide asylum seekers with an adequate standard of living that guarantees their subsistence and promotes their physical and mental health, based on the respect of human dignity.

However, no mechanism for the monitoring and oversight of the level of the reception conditions, including the possibility to lodge a complaint regarding conditions in reception facilities, has been established by L 4540/2018 or the IPA, contrary to the obligations under Article 28 of the recast Reception Conditions Directive. Thus, no designated body is in place to oversee reception conditions, and no possibility to lodge a complaint against conditions in reception facilities exists in Greece.<sup>689</sup>

### 2.1. Conditions in temporary accommodation facilities on the mainland

A total of 30 camps/sites, most of which created in 2015-2016 as temporary accommodation facilities in order to address urgent reception needs on the mainland, following the imposition of border restrictions, are still in use. Furthermore, due to a significant increase of arrivals in 2019 and the ongoing lack of an EU responsibility sharing mechanism, the construction of new camps on the mainland has been announced for the purposes of facilitating island decongestion.<sup>690</sup> As stated by the Greek Minister of Citizen Protection in a letter addressed to the CoE Commissioner for Human Rights,<sup>691</sup> these will reportedly function as “controlled” accommodation centres, with “entry-exit control systems”, and as further reported,<sup>692</sup> will at least initially consist of large tents/rub halls. Though their *modus operandi* remains to be seen in practice. The announced closed centres on the islands, and the reported plans on the construction of new camps in the rest of Greece have met with significant opposition and critique by local communities and authorities, which have on several occasions stressed the negative impact of camps, as opposed to humane conditions in apartments and/or other spaces within the societal fabric, inter alia arguing in favour of the expansion of the ESTIA accommodation scheme.<sup>693</sup>

On this note, it should be recalled that camps are not *per se* suitable for long-term accommodation as “camps can have significant negative impacts over the longer term for all concerned. Living in camps can engender dependency and weaken the ability of refugees to manage their own lives, which perpetuates the trauma of displacement and creates barriers to solutions, whatever form they take. In some contexts,

<sup>689</sup> See for example: FRA, *Current migration situation in the EU: Oversight of reception facilities*, September 2017, available at: <http://bit.ly/2xObtYA>, p. 2.

<sup>690</sup> Kathimerini, “10 new accommodation site to be opened”, 13 January 2020, available at: <https://bit.ly/2v0TC4D>.

<sup>691</sup> See “reply of Michalis Chrysochoidis, Minister of Citizen Protection of Greece”, 29 November 2019, available at: <https://bit.ly/3aKCwsm>.

<sup>692</sup> For instance see: kathimerini, ‘10 new accommodation sites are opening’ [‘Ανοίγουν δέκα νέες δομές φιλοξενίας’], 13 January 2020, available at: <https://bit.ly/2NZUWve>.

<sup>693</sup> For instance, see tvxs, “No end in sight for the government during marathon meeting with the local administration”, 10 January 2020, available (in Greek) at: <https://bit.ly/3b3lXb3>; efsyn, “Strong Critique during the Government’s consultation on the refugee issue”, 10 January 2020, available (in Greek) at: <https://bit.ly/2vJ4g0s>; Cretalive, ‘To welcome refugees, yes – to close them up in centres, no’, 19 December 2019, available (in Greek) at: <https://bit.ly/2OkNx9Y>;

camps may increase critical protection risks, including sexual and gender-based violence (SGBV) and child protection concerns.”<sup>694</sup>

Conditions vary across camp’s facilities on the mainland, as different types of accommodation and services are offered at each site. Compliance of reception conditions with the standards of the recast Reception Conditions Directive should be assessed against the situation prevailing in each camp.

Overall, though conditions in some mainland camps have improved since they were first established in 2015-2016, as stated by UNHCR in May 2019, “some continue to be below standards provided under EU and national law, especially for long-term living. The main gaps relate to the remote and isolated location, the type of shelter (most housing units are in ISO boxes), lack of security, and limitations in access to social services, especially for persons with specific needs and children. These living conditions coupled with a lack of clarity on future prospects over sustainable livelihood, have a detrimental impact on mental wellbeing”.<sup>695</sup>

Tents and rubhalls have also continued being used in some mainland camps in order to address the increased accommodation demand in 2019. On 13 September, a new camp was set up in Corinth, with the aim of functioning as a transit site for persons transferred from the islands, and has since been accommodating asylum seekers exclusively in tents/rubhalls. Conditions there have been reported as “squalid”, with “the marginality of the camp and the lack of any educational and recreational activities” further impacting on the mental health of asylum seekers, who have been reported as “feel[ing] abandoned, not well informed about legal procedures and their rights and opportunities and even in danger”.<sup>696</sup>

Furthermore, in a number of facilities on the mainland, conditions remain poor, as overcrowding, lack of or insufficient provision of services, violence and lack of security are consistently reported.<sup>697</sup>

On this note it should be recalled that, as illustrated by a 2018 report of the Council of Europe Commissioner of Human Rights with regard to conditions in the camps at the mainland, “the Commissioner’s attention was drawn to the fact that the living conditions prevailing in reception camps were not appropriate for long-term accommodation. Many of her interlocutors pointed out that most of these camps are made up of overcrowded containers and/or tents, do not cover the basic needs of their residents and are located in remote areas. In addition, a number of these sites reportedly operate without the required legal basis, a circumstance which raises serious issues regarding both their functioning and their oversight.”<sup>698</sup> These findings remain valid to a large extent during 2019.

More precisely, despite the fact that the capacity of mainland camps has been increased since 2018, overcrowding has remained an issue up to the end of 2019 and, in some cases, even worsened. As reported by UNHCR in October 2019, “new accommodation places must be provided to prevent pressure

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<sup>694</sup> UNHCR, *Policy on Alternatives to Camps*, 22 July 2014, UNHCR/HCP/2014/9, available at: <http://bit.ly/1DAf2kz>, p. 4.

<sup>695</sup> Recommendations by the Office of the United Nations High Commissioner for Refugees (UNHCR) concerning the execution of judgments by the European Court of Human Rights (ECtHR) in the cases of M.S.S. v. Belgium and Greece (Application No. 30696/09, Grand Chamber judgment of 21 January 2011) and of Rahimi v. Greece (Application No. 8687/08, Chamber judgment of 05 April 2011), available at: <https://bit.ly/2RuVeBd>, p.4.

<sup>696</sup> Refugee Support Aegean, “Neither here, nor there”: *Refugees transferred to Corinth transit camp are left in precarious limbo*, 1 November 2019, available at: <https://bit.ly/2U0SeJO>.

<sup>697</sup> Eric Reidy, ‘Two different hells’: Mainland offers little respite for refugees in Greece, *The New Humanitarian*, 5 December 2019, available at: <https://bit.ly/37y8C8D>. Also see kathimerini, ‘Struggle for survival at Skaramangas refugee camp’, 16 April 2019, available at: <https://bit.ly/2GtbN5K>.

<sup>698</sup> Council of Europe Commissioner for Human Rights, *Report of the Commissioner for Human Rights of the Council of Europe Dunja Mijatović following her visit to Greece from 25 to 29 June 2018*, CommDH(2018)24, 6 November 2018, 5.

from the islands spilling over into mainland Greece, where most sites are operating at capacity.”<sup>699</sup> The lack of necessary places can be also shown by the number of referrals to accommodation submitted by DPAS to the RIS, in cases of homeless and/or applicants living in precarious conditions on the mainland, as opposed to the number of referred applicants that ended up being provided with accommodation in a camp. Namely, and as mentioned above, out of a total of 950 outgoing requests for the accommodation of asylum applicants throughout 2019, only 55 were ultimately placed in camps, following their referral to the RIS.<sup>700</sup>

Moreover, since the majority of the camps are located outside urban areas and away from services, including the Asylum Service and its RAO / AAU and access to public transport, they generate a feeling of exclusion and isolation among the residents. The remoteness of some sites from cities has also been noted as one of the difficulties the applicants face in order to access the labour market and as a notable obstacles to self-reliance, integration and co-existence.

In a number of cases, asylum seekers residing in the mainland camps continued to protest against substandard living conditions and their ongoing exclusion from the Greek society. Indicatively, in January 2019, residents of **Diavata** blocked the road to protest against living conditions.<sup>701</sup> In February 2019, refugees alongside members of the Movement United Against Racism and the Fascist Threat, gathered outside the Ministry of Migration Policy, protesting their exclusion from social services, such as healthcare and education.<sup>702</sup> In April 2019 some 70 asylum seekers, amongst whom families with children, protested living conditions in the camp of **Skaramagkas**.<sup>703</sup> In September 2019, asylum seekers residing in **Malakasa** camp in Attica closed the Athens-Lamia byway of the national highway, protesting against their lengthy residence and living conditions in the camp.<sup>704</sup> In October 2019, a sit in protest took place in the centre of Corinth, with refugees protesting against conditions in the Corinthos camp.<sup>705</sup>

Finally, it should be noted that as discussed in [Types of Accommodation: Temporary Accommodation Centres](#), up until March 2020, the legal status of the vast majority of temporary camps, i.e. with the exception of **Elaionas**, **Schisto** and **Diavata**, remained unclear, as they operated without the requisite prior Joint Ministerial Decisions. Due to the lack of a legal basis for the establishment of the vast majority of the camps, no minimum standards and house rules were in force and there was no competent authority for the monitoring or evaluation of these facilities or any competent body in place for oversight. Moreover, most sites operated without official – under the Greek authorities – site management, which is substituted by site management support.<sup>706</sup> The impact of the Joint Ministerial Decision issued in March 2020, by which temporary accommodation facilities have been officially established, should be further assessed.

### Measures taken with regards the COVID 19 pandemic

Accommodation facilities on the mainland in which COVID-19 cases were identified, were put in quarantine for 14 days and all residents, i.e. COVID-19 cases and residents which have not been

<sup>699</sup> UNHCR, “Greece must act to end dangerous overcrowding in island reception centres, EU support crucial”, 1 October 2019, available at: <https://bit.ly/2RPpBxJ>.

<sup>700</sup> Information provided by the Directorate for the Protection of Asylum Seekers (DPAS) on 24 January 2020.

<sup>701</sup> CNN Greece, “Ένταση στη διάρκεια διαμαρτυρίας προσφύγων στα Διαβατά”, 7 January 2019, available in Greek at: <https://bit.ly/2SA1QHn>.

<sup>702</sup> iefimerida, ‘Διαμαρτυρία προσφύγων έξω από το υπουργείο Μεταναστευτικής Πολιτικής’, 28 February 2019, available in Greek at: <https://bit.ly/317Ym4N>.

<sup>703</sup> Newpost, ‘Διαμαρτυρία προσφύγων και μεταναστών στον Σκαραμαγκά (φωτό)’, 1 April 2019, available in Greek at: <https://bit.ly/2O481E5>.

<sup>704</sup> Ta Nea, ‘Μαλακάσα: Διαμαρτυρία προσφύγων για τις συνθήκες διαβίωσης’, 4 September 2019, available in Greek at: <https://bit.ly/36wSDGG>.

<sup>705</sup> Avgi, ‘Καθιστική διαμαρτυρία για τις άθλιες συνθήκες διαβίωσης από πρόσφυγες και μετανάστες στην Κόρινθο (Video)’, 4 October 2019, available in Greek at: <https://bit.ly/36v2o8f>.

<sup>706</sup> Refugee Support Aegean, ‘Reception Crisis in Greece: The malignancy of Attica’s refugee camps’, 13 August 2018, available at: <https://bit.ly/2sE5sgL>.

identified as such, were not allowed to exit the facility. COVID-19 cases have been confirmed, followed by a 14-day quarantine in Ritsona (Evoia region) accommodation facility (camp), Malakasa (Attica region) accommodation facility (camp) and Koutsohero (Larisa region) accommodation facility (camp) in the beginning of April 2020 and in a hotel used for the accommodation of applicants in Kranidi (Peloponnese) in late April 2020.<sup>707</sup> Since then, the lockdown in Ritsona, Malakasa and Koutsohero has been successively prolonged up until 7 June 2020, contrary to the lockdown on the general population which has been ended on 4 May 2020.<sup>708</sup> As reported, the “management of COVID-19 outbreaks in camps and facilities by the Greek authorities follows a different protocol compared to the one used in cases of outbreaks in other enclosed population groups. The Greek government protocol for managing an outbreak in a refugee camp, known as the ‘Agnodiki Plan’, details that the facility should be quarantined and all cases (confirmed and suspected) are isolated and treated in situ. In similar cases of outbreaks in enclosed population groups (such as nursing homes or private haemodialysis centres) vulnerable individuals were immediately moved from the site to safe accommodation, while all confirmed and suspected cases were isolated off-site in a separate facility”.<sup>709</sup>

## 2.2. Conditions on the Eastern Aegean islands

The situation on the islands has been widely documented and remains extremely alarming. Reception conditions prevailing in particular in the hotspot facilities may reach the level of inhuman or degrading treatment, while conditions of overcrowding leave an ever increasing number of asylum seekers without access to their rights.

The imposition of the “geographical restriction” on the islands since the launch of the EU-Turkey Statement (see [Freedom of Movement](#)) has led to a significant overcrowding of the reception facilities on the islands, which especially during the second half of 2019 reached explosive levels.

By the end of December 2019 more than 38,000 asylum seekers, amongst who 1,809 unaccompanied children, were living in facilities with a designated capacity of 6,178.<sup>710</sup> Conditions are largely described as woefully inadequate, severely overcrowded and dangerous, while a number of fatal events have been reported.

In August 2019, a 15-year-old unaccompanied minor was killed and two others were injured in the safe zone of the RIC of Moria.<sup>711</sup> In September 2019, a five-year old boy from Afghanistan was run over by a truck, while playing inside a cardboard box outside the RIC of **Lesvos**.<sup>712</sup> In the same month, a woman was killed while a large fire broke out in Moria RIC, Levos.<sup>713</sup> In December 2019, a 27-year-old Afghan woman, mother of three was killed in a fire which started at the container where she lived with her husband

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<sup>707</sup> See inter alia Papadatos-Anagnostopoulos D, Kourahanis N, Makridou E, Exclusion of refugees by the national strategy in response to COVID-19, Κέντρο Έρευνας και Εκπαίδευσης στη Δημόσια Υγεία, την Πολιτική Υγείας και την Πρωτοβάθμια Φροντίδα Υγείας, 2020, available at: <https://bit.ly/3cLvcwY>, 20.

<sup>708</sup> Joint Ministerial Decision No Δ1α/Γ.Π.οικ.26792/24.4.2020; Joint Ministerial Decision Δ1α/Γ.Π.οικ.28597/6.5.2020; Joint Ministerial Decision No Δ1α/Γ.Π.οικ. 31690/21.5.2020.

<sup>709</sup> Lancet-Migration, Carruthers E., Veizis A., Kondilis E., Orcutt M., Situational brief: Asylum seekers, refugees & migrants in Greece during covid-19, 27 May 2020, available at: <https://bit.ly/2zRUFGS>.

<sup>710</sup> General Secretariat for Information and Communication, National Situational Picture Regarding the Islands at Eastern Aegean Sea (31/12/2019), 2 January 2020, available at: <https://bit.ly/36ygYM6> and National Centre for Social Solidarity, Situation Update: Unaccompanied Children (UAC) in Greece (31 December 2019), 13 January 2020, available at: <https://bit.ly/2tXy3Sz>.

<sup>711</sup> UNHCR, ‘UNHCR shocked at death of Afghan boy on Lesvos; urges transfer of unaccompanied children to safe shelters’, 25 August 2019, available at: <https://bit.ly/2S18Olp>.

<sup>712</sup> In.gr, ‘Inconceivable tragedy: truck run over a 5 year old at Moria’, 24 September 2019, available at: <https://bit.ly/2vbwINq>.

<sup>713</sup> lefimerida.gr, Μόρια: Μία γυναίκα νεκρή από την εξέγερση μεταναστών, 29 September 2019, available at: <https://bit.ly/2R9wGse>.

and children, at the Kara Tepe accommodation site on Lesvos.<sup>714</sup> On March 2020, a 6 years old child was killed also by a fire broke out in Moria RIC, Lesvos.<sup>715</sup>

Following a number of recommendations to the Greek authorities regarding the living conditions on the islands issued in previous years,<sup>716</sup> similar recommendations have been addressed in 2019 *inter alia* by the Council of Europe Commissioner for Human Rights,<sup>717</sup> UNHCR,<sup>718</sup> UNICEF,<sup>719</sup> and civil society organisations working in the field of human rights and humanitarian assistance.<sup>720</sup>

On 1 October 2019, UNHCR has called Greek authorities to act in order to “end dangerous overcrowding in island reception centres”. As noted in the statement:

“UNHCR, the UN Refugee Agency, is today calling on Greece to urgently move thousands of asylum-seekers out of dangerously overcrowded reception centres on the Greek Aegean islands. Sea arrivals in September, mostly of Afghan and Syrian families, increased to 10,258 - the highest monthly level since 2016 – worsening conditions on the islands which now host 30,000 asylum-seekers [...] Keeping people on the islands in these inadequate and insecure conditions is inhumane and must come to an end”.<sup>721</sup>

On 31 October 2019, the CoE Commissioner for Human Rights, following her October 2019 visit to the RICs of **Moria**, Lesvos and **Vathy**, Samos, described the situation as “a struggle for survival”, stressing the “desperate lack of medical care and sanitation in the vastly overcrowded camps”. *Inter alia* in the Commissioner’s statement is noted that:

“The situation of migrants, including asylum seekers, in the Greek Aegean islands has dramatically worsened over the past 12 months. Urgent measures are needed to address the desperate conditions in which thousands of human beings are living[...] The Commissioner is appalled by the unhygienic conditions in which migrants are kept in the islands. It is an explosive situation. There is a desperate lack of medical care and sanitation in the vastly overcrowded camps I have visited. People queue for hours to get food and to go to bathrooms, when these are available. [...] This no longer has anything to do with the reception of asylum seekers. This has become a struggle for survival”.<sup>722</sup>

Following his visit to Lesvos in late November 2019, the UN High Commissioner for Refugees, Filippo Grandi, described the situation in **Moria** RIC as “extremely disturbing” and “horrifying”, commenting that Greece “needs to turn a page on how this [refugee] movement is handled”, and calling for solidarity at the

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<sup>714</sup> UNHCR, UNHCR saddened by death of Afghan mother of three on Lesvos island, 5 December 2019, available at: <https://bit.ly/2XblFum>.

<sup>715</sup> Éfsyn.gr, Ένα νεκρό παιδί από τη φωτιά στη Μόρια, 16 March 2020, available at: <https://bit.ly/3bPkzsk>.

<sup>716</sup> AIDA, Country Report Greece, 2017 Update, March 2018, 131-133.

<sup>717</sup> Council of Europe Commissioner for Human Rights, “Greece must urgently transfer asylum seekers from the Aegean islands and improve living conditions in reception facilities”, 31 October 2019, available at: <https://bit.ly/36V6oPD>.

<sup>718</sup> UNHCR, ‘Greece must act to end dangerous overcrowding in island reception centres, EU support crucial’, 1 October 2019, available at: <https://bit.ly/2RZN67D>.

<sup>719</sup> UNICEF, ‘More than 1,100 unaccompanied refugee and migrant children in Greece need urgent shelter and protection’, 29 August 2019, available at: <https://uni.cf/2OmQ6bK>.

<sup>720</sup> *Inter alia*, see Oxfam & GCR, *Lesvos Bulletin: Oxfam and the Greek Council for Refugee’s update on the EU ‘hotspot’ of Moria*, 19 December 2019, available at: <https://bit.ly/2ttu1kH>; ActionAid et. al, ‘Greek, EU authorities urged to break ‘vicious cycle’ of overcrowded asylum-seeker hotspots’, 18 September 2019, available at: <https://bit.ly/2RWOPKU>.

<sup>721</sup> UNHCR, ‘Greece must act to end dangerous overcrowding in island reception centres, EU support crucial’, 1 October 2019, available at: <https://bit.ly/2RZN67D>.

<sup>722</sup> Council of Europe, Greece must urgently transfer asylum seekers from the Aegean islands and improve living conditions in reception facilities, 31 October 2019, available at: <https://bit.ly/36SmSb2>.



EU level, in the form of “relocation places for vulnerable asylum seekers, particularly unaccompanied children”.<sup>723</sup>

On 7 February 2020, UNHCR called “for decisive action to end alarming conditions on Aegean islands”. As noted:

“UNHCR, the UN Refugee Agency, is urging Greece to intensify efforts to address alarming overcrowding and precarious conditions for asylum seekers and migrants staying on the five Greek Aegean islands of Lesbos, Chios, Samos, Kos, and Leros [...] Thousands of women, men, and children who currently live in small tents are exposed to cold and rain with little or no access to heating, electricity or hot water. Hygiene and sanitation conditions are unsafe. Health problems are on the rise. Despite the dedication of medical professionals and volunteers, many cannot see a doctor as there are simply too few medical staff at the reception centres and local hospitals”.<sup>724</sup>

On 21 February 2020, the UN High Commissioner for Refugees “called for urgent action to address the increasingly desperate situation of refugees and migrants in reception centres in the Aegean islands”. As noted:

“Conditions in facilities on Lesbos, Chios, Samos, Kos and Leros are woefully inadequate, and have continued to deteriorate since Grandi last visited in November [...] ‘Conditions on the islands are shocking and shameful,’ said Filippo Grandi, UN High Commissioner for Refugees [...] Winter weather is now also adding to the suffering on the islands. Many people are without power, and even water, living amid filth and garbage. Health services are negligible. The risks faced by the most vulnerable individuals, pregnant women, new mothers, the elderly and children are among the worst seen in refugee crises around the world. Action is also needed to address the understandable concerns of the local communities hosting the refugees and migrants, to avoid social tensions rising still further. And of course, Greece should not be left alone [...] responsibility-sharing measures such as the relocation of unaccompanied children and other vulnerable people [are still needed]. Since the end of the emergency relocation scheme in September 2017, only a handful of European countries have pledged to take asylum seekers and refugees from Greece under relocation and expedited family reunion”.<sup>725</sup>

Moreover, a number of cases with regards the situation on the Greek Islands have been examined before international jurisdictional bodies and respectively temporary protection has been granted.

*Inter alia*, in May 2019, in response to a collective complaint brought before the Committee by ICJ, and ECRE, with the support of GCR, the European Committee on Social Rights exceptionally decided to indicate immediate measures to Greece to protect the rights of migrant children and to prevent serious and irreparable injury or harm to the children concerned, including damage to their physical and mental health, and to their safety, by *inter alia* removing them from detention and from Reception and Identification Centres (RICs) at the borders.<sup>726</sup>

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<sup>723</sup> UNHCR, ‘Head of UNHCR calls for urgent response to overcrowding in Greek island reception centres, Europe to share responsibility’, 28 November 2019, available at: <https://bit.ly/2RsE2Ym> and UNHCR, ‘UNHCR chief urges action over conditions for asylum-seekers on Greek island’, 28 November 2019, available at: <https://bit.ly/38M2vxR>.

<sup>724</sup> UNHCR, UNHCR calls for decisive action to end alarming conditions on Aegean islands, 7 February 2020, available at: <https://bit.ly/3dUBDit>.

<sup>725</sup> UNHCR, Act now to alleviate suffering at reception centres on Greek islands, 21 February 2020, <https://bit.ly/3dUhV6u>.

<sup>726</sup> European Committee of Social Rights, Decision on admissibility and on immediate measures in the case International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, 23 May 2019, available at: <https://bit.ly/39clrGj>.

In December 2019, in a case supported by GCR, the European Court of Human Rights (ECtHR), under Rule 39 of the Rules of Court, granted interim measures to five unaccompanied teenagers, asylum seekers, who had been living for many months in the Reception and Identification Centre (RIC) and in the "jungle" of Samos. The interim measures indicated to the Greek authorities their timely transfer to a centre for unaccompanied minors and to ensure that their reception conditions are compatible with Article 3 of the Convention (prohibition of torture and inhuman and degrading treatment) and the applicants' particular status.<sup>727</sup>

Moreover, in three cases of vulnerable applicants living on the Greek Islands under a geographical restriction, supported by Equal Rights Beyond Borders, the European Court of Human Rights ordered the Greek Authorities to provide reception conditions in line with Art. 3. These include the case of a pregnant woman and persons with medical conditions during the Covid-19 pandemic.<sup>728</sup>

However and despite the repeated calls by international and national human rights bodies to address the increasingly desperate situation of refugees and migrants in reception centres in the Aegean islands and the increasing number of Courts' Decisions dealing with the situation on the Islands, the situation on the Greek Islands remained dangerous and persons there were exposed to significant protection risks during the whole 2019 and at the time of writing (April 2020).

As underlined by UNHCR in February 2020, "living conditions remained dangerous on the islands and thousands of women, men, and children who live in small tents are exposed to cold and rain with little or no access to heating, electricity or hot water".<sup>729</sup>

In the beginning of April 2020 and despite for example the Decision of the European Committee on Social Rights to indicate immediate measures and *inter alia* to order the Greek Authorities, to ensure that migrant children in RICs are provided with immediate access to age-appropriate shelters,<sup>730</sup> some 39,500 refugees and asylum seekers resided on the Aegean islands. Children accounted for 33% of whom more than 6 out of 10 are younger than 12 years old. Approximately 14% of the children are unaccompanied or separated, mainly from Afghanistan.<sup>731</sup> As of 9 April 2020, the total number of applicants remaining on the Greek islands was 39,994 out of which 35,437 remaining in the RICs facilities with a total capacity of 6,095 places.<sup>732</sup>

### Measures taken with regards the COVID 19 pandemic

On 22 March 2020 and within the framework of measure taken against the spread of COVID-19, with a Joint Ministerial Decision, a number of measures have been taken as of the islands' RICs facilities. In accordance with said JMD, *inter alia* since 22 March 2020, there has been a lockdown in islands' RICs facilities and annexes of these facilities. Residents of these facilities are restricted within the perimeter of the Centre and exit is not allowed with the exception of one representative of each family or group of residents who is allowed to exit the facility (between 7 am and 7 pm) in order to visit the closest urban centre to cover basic needs. No more than 100 persons per hour could exit the facility for this purpose if

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<sup>727</sup> GCR, The European Court of Human Rights provides interim measures to unaccompanied minors living in the RIC and the "jungle" of Samos island, 30 December 2019, available at: <https://bit.ly/2GYQY2p>.

<sup>728</sup> Equal Rights Beyond Border, Application No. 15192/20 - M.A. v. Greece, 26/03/2020, Vial evacuation COVID-19; Application No. 15782/20 - M.A. v. Greece, 07/04/2020 Vial evacuation COVID-19; Application No. 59841/19 - A.R. v. Greece, 21/11/2019 SGBV-evacuation Kos – Lifting of Geographical Restriction, available at: <https://www.equal-rights.org/greece>.

<sup>729</sup> UNHCR, Factsheet, Greece: 1-29 February 2020, available at: <https://data2.unhcr.org/en/documents/download/74972>.

<sup>730</sup> European Committee of Social Rights, *Idem*.

<sup>731</sup> UNHCR, Aegean Islands Weekly Snapshot, 30 March – 05 April 2020, available at: <https://bit.ly/3a7EHVc>.

<sup>732</sup> General Secretariat for Information and Communication, National Situational Picture Regarding the Islands at Eastern Aegean Sea (9/4/2020), 10 April 2020, available at: <https://bit.ly/2K1Kscl>.

public transport was not available.<sup>733</sup> For the same period, all visits or activities inside the RICs not related to the accommodation, food provision and medical care of RIC residents, are only permitted following authorization of the RIC management. For the provision of legal services, access shall also be granted following authorization from the RIC management and in a specific area, where this is feasible. Special health units were also established in order to treat any case of COVID-19 and to conduct health screening for all RIC staff.<sup>734</sup>

Civil society organizations have urged the Greek Authorities to urgently evacuate the squalid Greek camps on the islands. As they note, “camps, especially on the Aegean islands, suffer from severe overcrowding and lack of adequate sanitary facilities, making it impossible to ensure social distancing and hygiene conditions for both residents and employees. This poses a major threat to public health for both asylum seekers and for society as large”.<sup>735</sup> As reported “Conditions in the island RICs are overcrowded and unhygienic, putting residents at risk from communicable disease and making it all but impossible to follow public health guidance around prevention of COVID-19. The RICs are currently several times over capacity, and many residents are living in informal areas around the official camps. The provision of water and sanitation services are not sufficient for the population, thereby presenting significant risks to health and safety. In some parts of the settlement in Moria, there are 167 people per toilet and more than 242 per shower. Around 5,000 people live in an informal extension to the Moria camp known as the ‘Olive Grove’ who have no access to water, showers or toilets. 17 Residents of island RICs must frequently queue in close proximity to each other for food, medical assistance, and washing. In such conditions, regular handwashing and social distancing are impossible”.<sup>736</sup>

A plan to transfer vulnerable asylum seekers out of the RICs was also announced in March 2020. In early April 2020, UNHCR launched an open call for renting hotel rooms on the Greek Islands and boats for the accommodation of vulnerable applicants residing in the Aegean RICs facilities, with a view to face a potential spread of COVID-19 in the reception facilities and its impact on local communities.<sup>737</sup> Furthermore, a number of 1,138 applicants have been transferred from the islands to the mainland during April 2020.<sup>738</sup> However, islands RICs remain significantly overcrowded. 34,544 persons remained in islands’ RICs facilities with a nominal capacity of 6,095 places as of 30 April 2020.<sup>739</sup>

The restriction of the movement of persons residing on the island RICs, out of these facilities has been successively prolonged up to 7 June 2020,<sup>740</sup> contrary to the lockdown on the general population which has been ended on 4 May 2020.

Additionally, as mentioned in Reception and identification procedures on the islands, newly arrived persons on the Greek Islands, since late March- April 2020 are subject in a 14 days quarantine outside of the RIC facilities, prior to their transfer to RICs, which caused challenges due to limited suitable facilities for isolating new arrivals on the islands.

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<sup>733</sup> JMD No. Δ1α/ΓΠ.οικ. 20030, Gov. Gazette B’ 985/22-3-2020.

<sup>734</sup> UNHCR, Help-Greece, About Coronavirus, available at: <https://help.unhcr.org/greece/coronavirus/#Restrictions>

<sup>735</sup> Protect the most vulnerable to ensure protection for everyone!-Open letter of 121 organizations, 25 March 2020, available at: <https://bit.ly/3ejX5xl>.

<sup>736</sup> Lancet-Migration, Carruthers E., Veizis A., Kondilis E., Orcutt M., SITUATIONAL BRIEF: ASYLUM SEEKERS, REFUGEES & MIGRANTS IN GREECE DURING COVID-19, 27 May 2020, available at: <https://bit.ly/2zRUFGS>.

<sup>737</sup> Tonisi.gr, Κίνηση προστασίας ντόπιων και προσφύγων από την Ύπατη Αρμοστεία του ΟΗΕ, 10 April 2020, available at: <https://bit.ly/3cbHLRG>.

<sup>738</sup> Ministry of Migration and Asylum, Press Release, 7 May 2020, available at: <https://bit.ly/36IX5DG>.

<sup>739</sup> General Secretariat for Information and Communication, National Situational Picture Regarding the Islands at Eastern Aegean Sea, 30 April 2020, available at: <https://bit.ly/3esysOX>.

<sup>740</sup> JMD No Δ1Α/ΓΠ.οικ.29105/2020, Gov. Gazette B’ 1771/9-5-2020; JMD No Δ1α/ΓΠ.οικ. 20030/2020, Gov. Gazette B’ 985/22-3-2020.

By late May 2020, there have been no confirmed cases of COVID-19 among persons residing in RICs facilities on the Greek islands. Four cases have been identified among new arrivals to Lesbos. There have been 9 reported local Greek population cases across all the Aegean islands where RICs are located.<sup>741</sup>

### 2.3. Destitution

Destitution and homelessness still remain matters of concern, despite the efforts made in order to increase reception capacity in Greece (see [Types of Accommodation](#)).

As stated by UNHCR in February 2020, “Housing options and services to cater for the present population are scarce countrywide”.<sup>742</sup>

The number of applicants who face homelessness is not known, as no official data are published on the matter. However, the lack of available accommodation can be illustrated by the low rate of placement in accommodation facilities. For example, during 2019, out of the 950 requests from homeless or under precarious living conditions asylum seekers in the mainland sent from the Directorate for the Protection of Asylum Seekers (DPAS) to the Reception and Identification Service (RIS), for place in an open accommodation facility in the mainland, only 55 applicants were finally offered an accommodation place in a facility (5.7%). Respectively, between January 2017 and December 2019, GCR received more than 650 requests from homeless families and single men, all of whom applicants of international protection, to assist them in finding accommodation, through the provided process of referring them to the competent authorities, yet, as far as GCR is aware, to no avail.<sup>743</sup>

Due to the ongoing lack of sufficient accommodation capacity on the mainland in 2019, newly arrived persons, including vulnerable groups, have continued resorting to makeshift accommodation or remained homeless in urban areas of (primarily) **Athens** and **Thessaloniki**.<sup>744</sup> This has further exacerbated in 2019, following the evictions of a number of squats in Athens, which had previously been used by necessity by asylum seekers and refugees as a means to find accommodation.<sup>745</sup> For example, in November and December 2019, GCR was contacted by 12 families, applicants for international protection, who had been evicted from a squat in central Athens and all of whom had remained homeless, as they had not been provided with any alternatives for their accommodation. Amongst those exposed to homelessness in Athens, GCR has further identified a single mother with her months old infant child, a single man living in a park and an 18 year old girl from Somalia.<sup>746</sup>

The IPA, in force since January 2020, imposed a 6 months restriction to asylum seekers for accessing the labour market (see [Access to Labour](#)). Asylum seekers are thus exposed to a situation of potential destitution and homelessness. This should be taken into consideration, as during this period asylum seekers are exclusively dependent on benefits and scarce reception options.

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<sup>741</sup> Lancet-Migration, *ibid*.

<sup>742</sup> UNHCR, Factsheet, Greece: 1-29 February 2020.

<sup>743</sup> GCR, Christmas, the homeless journey continues: GCR Press Release, 23 December 2019, available (in Greek) at: <https://bit.ly/2Rm92cJ>.

<sup>744</sup> For instance, see AIDA, ‘Greece: Destitution and makeshift accommodation continues in Thessaloniki’, 6 February 2019, available at: <https://bit.ly/2lttbLm>; Greek Forum of Refugees, ‘The “invisible” people of Athens and the journey of an unaccompanied minor that remains homeless’, 16 January 2020, available at: <https://bit.ly/36POjT2>; Refugee Support Aegean, *Reception crisis in Northern Greece: Three years of emergency solutions*, 22 May 2019, available at: <https://bit.ly/2GQrNyD>.

<sup>745</sup> Inter alia, see Amnesty International, ‘Statement of Amnesty International on the eviction of refugees from the squats in Exarcheia’, 29 August 2019, available at: <https://bit.ly/31q2AVo>; iefimerida, ‘Refugees camped in Syntagma – Homeless after the police operation in Exarcheia’, 19 April 2019, available at: <https://bit.ly/2Sa8d5G>;

<sup>746</sup> GCR, ‘Christmas, the homeless journey continues’, 23 December 2019, available (in Greek) at: <https://bit.ly/2vOOOQt>.

Moreover, as mentioned above, living conditions on the Eastern Aegean islands do not meet the minimum standards of the recast Reception Conditions Directive and thus asylum seekers living there are exposed to deplorable conditions, frequently left homeless and without access to decent housing or basic services.<sup>747</sup> Overcrowding also occurs in mainland sites. Given the poor conditions and the protection risks present in some of these sites, homelessness and destitution cannot be excluded by the sole fact that an applicant remains in one of these sites.

Persons identified as vulnerable also face destitution risks. As of 31 December 2019, there were 5,301 unaccompanied and separated children in Greece, but only 1,286 places in long-term dedicated accommodation facilities, and 748 places in temporary accommodation.<sup>748</sup> Given the high occupancy rate of the UNHCR scheme places, which was reported at 98% as of 31 December 2019,<sup>749</sup> and the length of the asylum procedure, the possibility for newly arriving vulnerable families and persons to benefit from accommodation under that scheme should be further assessed. In urban areas, homeless SGBV survivors have increased in the last six months, while one out of three survivors report to have been raped while homeless. NGO Diotima reports that out of the 134 SGBV survivors who had benefited by its services between June and November 2019, 73% were homeless. 37% of homeless women reported that they have been subject to one or more SGBV incidents, directly related with their homelessness.<sup>750</sup>

In any event, in order for the Greek authorities' compliance with their obligations relating to reception conditions to be assessed, the number of available reception places that are in line with the standards of the recast Reception Conditions Directive should be assessed against the total number of persons with pending asylum applications, i.e. 87,461 applications pending at first instance and about 14,547 appeals pending before different Appeals Committees,<sup>751</sup> at the end of 2019.

## 2.4. Racist violence

An alarming expansion of racism, continuation of the culture of violence at neighborhoods<sup>752</sup> and incidents of racist violence and tension has continued being recorded throughout 2019. Both on the islands and the mainland refugees and asylum seekers have remained at a heightened risk of racist violence.<sup>753</sup> These have *inter alia* concerned hate speech on public transportation;<sup>754</sup> racist attacks against migrants and asylum seekers that have affected even minors,<sup>755</sup> and attacks on humanitarian workers.

The Racist Violence Recording Network (RVRN) coordinated by UNHCR and the Greek National Commission for Human Rights, has witnessed an increasing number of xenophobic and racist incidents in 2019 and early 2020, targeting the transfers of asylum-seekers to reception facilities on the mainland, newly arrived refugees and migrants, as well as staff of international organizations and NGOs, members

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<sup>747</sup> For instance, see ethnos, 'Samos: Hundreds of homeless migrants sleep in the streets', 17 October 2019, available at: <https://bit.ly/2OsBw2m>.

<sup>748</sup> EKKA, *Situation Update: Unaccompanied Children (UAC) in Greece*, 31 December 2019, available at: <https://bit.ly/36Mp0RT>.

<sup>749</sup> UNHCR, *ESTIA Accommodation Capacity Weekly Update (as of 31 December 2019)*, 3 January 2020, available at: <https://bit.ly/2FoLop2>.

<sup>750</sup> UNHCR, Factsheet, Greece: 1-31 January 2020, available at: <https://bit.ly/2V6beGR>; Diotima, Αστεγες πολλές προσφύγισες – θύματα έμφυλης βίας, 16 January 2020, available at: <https://bit.ly/2y9PmBI>.

<sup>751</sup> Information provided by the Asylum Service, 17 February 2020, Information provided by the Appeals Authority, 29 April 2020.

<sup>752</sup> News.gr, 'Διευρύνεται η βάση του ρατσισμού και η κουλτούρα της βίας στις γειτονιές', 14 March 2019, available in Greek at: <https://bit.ly/2usL2rQ>.

<sup>753</sup> UNHCR, 'Refugees in Greece remain exposed to racist violence', 21 March 2019, available (in Greek) at: <https://bit.ly/2UnjN0f>.

<sup>754</sup> Ta nea, 'Racist attack of bus ticket controller against refugee: "I will put you in the garbage"', 14 January 2020, available (in Greek) at: <https://bit.ly/2RXv6dQ>.

<sup>755</sup> CNN Greece, 'Attack against refugees at Vilia: they even hit a child', 18 March 2019, available (in Greek) at: <https://bit.ly/2UooOW9>.

of civil society and journalists, due to their association with the defence of the rights of refugees, on the Islands and in Evros. As noted by the RVRN, in March 2020, “such targeted attacks have escalated with physical assaults on staff providing services to refugees, arsons in facilities used for shelter and for services to refugees, NGO vehicles and blocking of the transfer or the disembarkation of new arrivals with the parallel use of racist comments”.<sup>756</sup>

## C. Employment and education

### 1. Access to the labour market

#### Indicators: Access to the Labour Market

1. Does the law allow for access to the labour market for asylum seekers?  Yes  No  
❖ If yes, when do asylum seekers have access the labour market? 6 months
2. Does the law allow access to employment only following a labour market test?  Yes  No
3. Does the law only allow asylum seekers to work in specific sectors?  Yes  No  
❖ If yes, specify which sectors:
4. Does the law limit asylum seekers' employment to a maximum working time?  Yes  No  
❖ If yes, specify the number of days per year
5. Are there restrictions to accessing employment in practice?  Yes  No

Up to the end of 2019, asylum seekers had access to the labour market as employees or service or work providers from the moment an asylum application had been formally lodged and they had obtained an asylum seeker's card.<sup>757</sup> Applicants who had not yet completed the full registration and lodged their application i.e. applicants who were pre-registered, did not have access to the labour market. As noted in [Registration](#), the average time period between pre-registration and full registration across mainland Greece (registration via Skype) was 44 days in 2019.<sup>758</sup>

Following the entry into force of the IPA on 1 of January 2020, a 6-month time limit for asylum seekers' access to the labour market has been introduced. This right is granted if no first instance decision has been taken by the Asylum Service within 6 months of the lodging of the application, through no fault of the applicant.<sup>759</sup> The right is automatically withdrawn upon issuance of a negative decision which is not subject to an automatically suspensive appeal.<sup>760</sup>

The new law specifies that access to employment shall be “effective”.<sup>761</sup> As observed, in 2018, by the Commissioner for Human Rights of the Council of Europe, access to the labour market is seriously hampered by the economic conditions prevailing in Greece, the high unemployment rate, further obstacles posed by competition with Greek-speaking employees, and administrative obstacle in order to obtain necessary document, which may lead to undeclared employment with severe repercussions on the enjoyment of basic social rights.<sup>762</sup> These findings remain valid, even though the unemployment rate

<sup>756</sup> RVRN, 'Racist Violence Recording Network expresses concern over xenophobic reactions against refugees', 11 November 2019, available at: <https://bit.ly/3963YPt>.

<sup>757</sup> Article 71 L 4375/2016, as previously in force; Article 15 L 4540/2018.

<sup>758</sup> Information provided by the Greek Asylum Service on 17 February 2020.

<sup>759</sup> Article 53(1) IPA; Article 71 L 4375/2016, as amended by Article 116(10) IPA.

<sup>760</sup> Article 53(2) IPA.

<sup>761</sup> Article 53(1) IPA.

<sup>762</sup> Council of Europe, *Report of the Commissioner for Human Rights of the Council of Europe Dunja Mijatović following her visit to Greece from 25 to 29 June 2018*, CommDH(2018)24, 6 November 2018, available at: <https://bit.ly/2lwG4EG>, paras 54-55.

dropped from 19.1% in July 2018 to 16.9% in July 2019. Higher rates were reported for persons aged up to 34 years old: 22.8% for age group 25-34 and 32.9% for age group 15-24.<sup>763</sup>

In 2017, in order to reduce administrative obstacles to the access of asylum seekers to the labour market, and more precisely obstacles with regards the provision of the Tax Registration Number (*Αριθμός Φορολογικού Μητρώου*, AFM), without which one cannot legally work, the General Secretary of Migration Policy addressed a letter to the competent authorities, giving instructions for a proper implementation of the law. Moreover, in February 2018, following a decision of the Hellenic Manpower Employment Organisation, (*Οργανισμός Απασχόλησης Εργατικού Δυναμικού*, OAED) the possibility to provide a certification from the reception facility has been added for asylum seekers willing to register themselves at the OAED registry.<sup>764</sup>

Despite these positive developments, difficulties in obtaining an AFM number and unemployment cards from OAED are still reported. In October 2018, UNHCR issued the findings of a participatory assessment in which a sample of 1,436 asylum seekers and refugees participated. According to this survey:

“Most participants reported difficulties in accessing the labour market. They attributed this to a lack of information, high unemployment rates, lack of required documentation (e.g. residency permits, passport), language barriers, the remoteness of some sites from cities, and lack of job advice and placement support... Participants found the programmes on self-reliance and employment limited and unstructured... The remote location of some sites and RICs from cities were noted as notable obstacles to self-reliance, integration and co-existence... The lack of Greek language classes, which most perceive to be required for integration, was a commonly referenced issue. While most participants [had] social security numbers (AMKA), they [had] difficulty obtaining other documents such as AFM and unemployment cards from OAED.”<sup>765</sup>

These difficulties are more marked for applicants residing in open mainland camps and/or informal accommodation. As of the end of 2019, of the 24,110 persons residing in the 30 open mainland sites, only 1 in 4 had managed to obtain an AFM (28.62%) and even less were able to obtain unemployment cards from OAED (6.57%).<sup>766</sup> For those residing in ESTIA apartments, though the situation was reported relatively better, similar challenges were highlighted, with 79% of beneficiaries having managed to obtain an AFM, 37% being registered with OAED,<sup>767</sup> despite the additional support provided under the scheme.

In addition, asylum seekers have continued facing significant obstacles to opening bank accounts, including those dedicated for the payment of the salary, which are a precondition for payment in the private sector.<sup>768</sup> The four major banks in Greece have repeatedly refused to open bank accounts to asylum seekers, even in cases where a certification of recruitment is submitted by the employer. “In fact, this policy offends against the spirit and the letter of the law, excluding thus the asylum seekers from the labour market. At the same time, employers willing to recruit asylum seekers are discouraged because of this significant barrier or, even when hiring them, face the risk of penalties”, as highlighted by the civil society organisation Generation 2.0.<sup>769</sup>

<sup>763</sup> Hellenic Statistical Authority, *Έρευνα εργατικού δυναμικού: Ιούλιος 2019*, 10 October 2019, available in Greek at: <https://bit.ly/2Optyr1>.

<sup>764</sup> OAED, ‘Δυνατότητα εγγραφής στο Μητρώο του ΟΑΕΔ, ανέργων χωρίς μόνιμη κατοικία’, 28 February 2018, available in Greek at: <http://bit.ly/2CU9WCK>.

<sup>765</sup> UNHCR, *Inter-agency Participatory Assessment Report*, October 2018, available at: <https://bit.ly/2BPP3LI>, 9.

<sup>766</sup> IOM, *Improving the Greek Reception System through Site Management Support and Targeted Interventions in Long-Term Accommodation Sites: factsheet December 2019*, available at: <https://bit.ly/393IR1x>.

<sup>767</sup> UNHCR, Greece factsheet (December 2019), 24 January 2020, available at: <https://bit.ly/2Op5bJQ>, p.5.

<sup>768</sup> JMD 22528/430/2017, Gov. Gazette B' 1721/18.5.2017.

<sup>769</sup> Generation 2.0, ‘When the Greek banks deprive asylum seekers of their right to work’, 16 January 2019, available at: <https://bit.ly/2TVwTCV>.

In December 2019, only 8% of those living in ESTIA apartments had managed to open a bank account,<sup>770</sup> highlighting the magnitude of the challenge applicants and beneficiaries face in accessing the labour market.

Lastly, applicants' access to the labour market has been further hindered by obstacles in acquiring a social security number (AMKA, see healthcare), which is a requirement for employment. Throughout 2019, GCR's Social Unit had several cases of applicants who had found employment but were then unable to proceed with signing contracts due to the lack of AMKA. In December 2019, furthermore, the Greek Ombudsman intervened in the case of a Turkish asylum applicant, who was similarly able to find employment but was unable to legally work due to the ongoing barriers in obtaining a social security number. To be noted, in his case the competent services justified the refusal of issuing the applicant with an AMKA on the basis of the IPA, which, at the time, was still not in force.<sup>771</sup>

As regards vocational training, Article 17(1) L 4540/2018 provides that applicants can have access to vocational training programmes under the same conditions and prerequisites as foreseen for Greek nationals. The same is reiterated in Article 54(1) IPA. However, the condition of enrolment "under the same conditions and prerequisites as foreseen for Greek nationals" does not take into consideration the significantly different position of asylum seekers, and in particular the fact that they may not be in a position to provide the necessary documentation.<sup>772</sup> Article 17(2) L 4540/2018, provides that the conditions for the assessment of applicants' skills who do not have the necessary documentation will be set by a Joint Ministerial Decision. The same is reiterated in Article 54(2) IPA. Such a decision had not been issued by the end of 2019.

## 2. Access to education

### Indicators: Access to Education

1. Does the law provide for access to education for asylum-seeking children?  Yes  No
2. Are children able to access education in practice? Depending on location

According to Article 51 IPA, asylum-seeking children are required to attend primary and secondary school under the public education system under similar conditions as Greek nationals. Contrary to the previous provision,<sup>773</sup> the IPA does not mention education as a right but as an obligation. Facilitation is provided in case of incomplete documentation, as long as no removal measure against them or their parents is actually enforced. Access to secondary education shall not be withheld for the sole reason that the child has reached the age of maturity. Registration may not take longer than 3 months from the identification of the child.

A Ministerial Decision issued in August 2016, which was repealed in November 2016 by a Joint Ministerial Decision, established a programme of afternoon preparatory classes (*Δομές Υποδοχής και Εκπαίδευσης Προσφύγων*, DYEP) for all school-aged children aged 4 to 15.<sup>774</sup> The programme is implemented in public schools neighbouring camps or places of residence, with the location and operationalisation of the afternoon preparatory classes being subject to the yearly issuance of a Joint Ministerial Decision (exceptionally a Decision by the Minister of Education). Such decisions have been respectively issued for

<sup>770</sup> UNHCR, *ibid*.

<sup>771</sup> Intervention of the Greek Ombudsman on the "Non issuance of AMKA to asylum seeker applicant of international protection – immediate need of hospitalisation of cancer patient" on 6 December 2019.

<sup>772</sup> GCR, *Observations on the Draft Law transposing the Reception Directive*, 31 October 2016, available in Greek at: <https://goo.gl/MBRqno>.

<sup>773</sup> Article 13 L 4540/2018.

<sup>774</sup> Joint Ministerial Decision 180647/ΓΔ4/2016, GG 3502/2016/B/31-10-2016, available in Greek at: <https://bit.ly/36W3cDn>.



each school year in January and November 2017, August 2018 and October 2019, for school years 2016-2017, up to 2019-2020.

Children aged between 6-15 years, living in dispersed urban settings (such as UNHCR accommodation, squats, apartments, hotels, and reception centres for asylum seekers and unaccompanied children), may go to schools near their place of residence, to enrol in the morning classes alongside Greek children, at schools that will be identified by the Ministry. This is done with the aim of ensuring balanced distribution of children across selected schools, as well as across preparatory classes for migrant and refugee children where Greek is taught as a second language.<sup>775</sup>

Although the refugee education programme implemented by the Ministry of Education is highly welcome, the school attendance rate should be reinforced, while special action should be taken in order for children remaining on the islands to be guaranteed access to education.

In October 2019, the estimated number of refugee and migrant children in Greece was 37,000, among whom 4,686 were unaccompanied. Out of the number of children present in Greece, it was estimated that only a third (12,800-12,900) of refugee and migrant children of school age (4-17 years old) were enrolled in formal education during the school year 2018-2019. The rate of school attendance was higher for those children living in apartments and for unaccompanied children benefitting from reception conditions (67%).<sup>776</sup>

At the beginning of September 2019, children's access to education was further complicated by the lack of an official system for transportation between camps and schools and the reported delay in issuing the necessary Ministerial Decision for the operationalization of DYEPs.<sup>777</sup> Obstacles (see Health) in issuing a Social Security Number (AMKA), which serves as a pre-requisite for getting vaccination and in turn enrolling to schools, were also an impediment to school attendance.<sup>778</sup>

According to the Deputy Minister of Education, in December 2019, the number of children enrolled in formal education during the school year 2019-2020 was 8,000, i.e. 5,000 children less than the previous school year.<sup>779</sup>

The vast majority of children on the **Eastern Aegean islands**, where they have to remain for prolonged periods under a geographical restriction together with their parents or until an accommodation place is found in the case of unaccompanied children, do not have access to formal education.

Regarding the school year 2019-2020, as far as GCR is aware no afternoon preparatory classes (DYEP) were taking place in the Northern Aegean islands by the end of 2019.

As reported by UNHCR, "there are significant constraints for children to access formal education and only a limited number of children seeking protection residing in the RICs attend public schools on the islands. As of 30 June 2019, the 1,625 children (ages 5 to 17 including UAC) residing in Moria on Lesbos have no

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<sup>775</sup> Ministry of Education, Q&A for access to education for refugee children, 1 February 2017, available at: <http://bit.ly/2malzAv>.

<sup>776</sup> UNICEF, Refugee and migrant children in Greece as of 31 October 2019, available at: <https://uni.cf/2Sloe92>.

<sup>777</sup> Efsyn, 'Parliamentarians question on refugee children's access to education', 20 September 2019, available at: <https://bit.ly/3bcovnB>.

<sup>778</sup> GCR, 'Beginning of the school year for refugee children as well? There is need for immediate state measures', 12 September 2019, available in Greek at: <https://bit.ly/37XGagP>.

<sup>779</sup> Efsyn.gr, '5.000 προσφυγόπουλα εκτός εκπαίδευσης', 9 December 2020, available at: <https://bit.ly/2xkjElc>.

access to formal education”.<sup>780</sup> In August 2019, out of the total number of school-aged children on the islands, **only 1 in 4** had access to public education.<sup>781</sup>

In May 2019, following a Collective Complaint lodged by ECRE and ICJ, with the support of GCR, before the European Committee for Social Rights of the Council of Europe (ECSR), the ECSR has granted immediate measures and indicated to the Greek Authorities to ensure access to education.<sup>782</sup>

## D. Health care

### Indicators: Health Care

1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?  
 Yes       No
2. Do asylum seekers have adequate access to health care in practice?  
 Yes       Limited       No
3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?  
 Yes       Limited       No
4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care?  
 Yes       Limited       No

L 4368/2016, which provides free access to public health services and pharmaceutical treatment for persons without social insurance and vulnerable,<sup>783</sup> is also applicable for asylum seekers and members of their families. However, in spite of the favorable legal framework, actual access to health care services has been consistently hindered in practice by significant shortages of resources and capacity for both foreigners and the local population, as the public health sector is under extreme pressure and lacks the capacity to cover all the needs for health care services, as well as the lack of adequate cultural mediators. A recent research documents the impact of the ten years financial crisis and the austerity measures on the Greek public Health System.<sup>784</sup>

In addition to the limited capacity of the public Health system, applicants' access to healthcare has been further hindered as far back as 2016,<sup>785</sup> due to the reported “generalised refusal of the competent public servants to provide asylum seekers with an AMKA”<sup>786</sup> (i.e. social security number), which up to the entry into force of article 55 IPA served as the *de facto* requirement for accessing the public healthcare system. This was further aggravated following a [Circular](#) issued on 11 July 2019, which in practice revoked asylum seekers' access to the AMKA. As noted by Amnesty International in October 2019, “the administrative obstacles faced by many asylum seekers and unaccompanied children in issuing an AMKA have significantly deteriorated following 11 July 2019, when the Ministry of Labour revoked the circular which

<sup>780</sup> UN High Commissioner for Refugees (UNHCR), *Submission by the Office of the United Nations High Commissioner for Refugees in the case of International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece (Complaint No. 173/2018) before the European Committee of Social Rights*, 9 August 2019, available at: <https://bit.ly/2vKDQeE>.

<sup>781</sup> UNHCR, ‘The majority of children refugees on the Greek islands do not go to school, 29 August 2019, available (in Greek) at: <https://bit.ly/3bc9sdm>.

<sup>782</sup> ECSR, Decision on admissibility and on immediate measures, International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No.173/2018, 23 May 2019.

<sup>783</sup> Article 33 L 4368/2016.

<sup>784</sup> Amnesty International, *Greece: resuscitation required – the Greek health system after a decade of austerity*, April 2020, available at: <https://bit.ly/3cAKeG0>.

<sup>785</sup> SolidarityNow, “Issues with the issuance of AMKA to international protection applicants”, 10 November 2016, available (in Greek) at: <https://bit.ly/3bgttja>.

<sup>786</sup> Joint Agency Briefing Paper, Transitioning to a Government-run Refugee and Migrant Response in Greece: A joint NGO roadmap for more fair and humane policies, December 2017, available at: <https://bit.ly/2S3yiVn>, 12.

regulated the issuance of AMKA to non-Greek citizens. Following the circular's revocation, no procedure was put in place for the issuance of AMKA to asylum seekers and unaccompanied minors".<sup>787</sup>

Article 55 of the IPA, introduced a new a Foreigner's Temporary Insurance and Health Coverage Number (*Προσωρινός Αριθμός Ασφάλισης και Υγειονομικής Περίθαλψης Αλλοδαπού*, PAAYPA), replacing the previous Social Security Number (AMKA). PAAYPA is to be issued to asylum seekers together with their asylum seeker's card.<sup>788</sup> With this number, asylum seekers are entitled free of charge access to necessary health, pharmaceutical and hospital care, including necessary psychiatric care where appropriate. The PAAYPA is deactivated if the applicant loses the right to remain on the territory.<sup>789</sup> Said provisions of the IPA entered into force since 1 November 2019. However, it has not been activated by the end of 2019.

Due to the obstacles in issuing AMKA, the circular revoking the issuance of AMKA in July 2019 and pending the implementation of article 55 IPA, newly arrived applicants and/or applicants who had up to then been unable to issue an AMKA, even in highly vulnerable cases and including unaccompanied minors,<sup>790</sup> have been *de facto* excluded from access to the public healthcare system, with the exception of emergency cases.

Indicatively, in December 2019, GCR undertook the case of a 25-year-old asylum seeker from Pakistan, with a form of rapidly progressive cancer, who was unable to access healthcare services, be hospitalised, or acquire necessary medication, due to the lack of a social security number (AMKA or PAAYPA). His hospitalisation was made possible only through the good will of the General Hospital of Athens, while following the notification of the case to the Greek Ombudsman, the latter called the competent authorities to find an immediate solution for his free of charge hospitalisation, *inter alia* stating that "the gap in the implementation of the law cannot burden the asylum seeker who is facing an immediate danger to his life".<sup>791</sup>

Moreover, as further noted by MsF in December 2019, "Our medical and mental health teams witness daily the harmful health consequences of the intentional exclusion of asylum seekers and undocumented people accessing their fundamental right to health. Between July and November this year, in our day centre in Athens we have seen a steep rise in the number of patients seeking care who don't have AMKA, going from 18% of patients in January to 43% in November. Many health conditions our patients present with are manageable with regular treatment, yet, as people are unable to access this, their conditions are at risk of deteriorating".<sup>792</sup>

Similarly, on the Eastern Aegean islands, access to health remains particularly restricted due to the chronic lack of staff, the aforementioned lack of a social security number, and persisting overcrowding which, especially in the second half of the year, was even further accentuated. Indicatively, for the most throughout 2019, the RIC of Lesbos had only 2 state-provided (military) doctors, the RIC of Chios 1, the RIC of Leros 1, the RIC of Samos 2 and the RIC of Kos 2, with the number of resident at the end of 2019 being respectively at 18,615, 5,784, 2,496, 7,765 and 3,765. Moreover, by the end of January 2020, in the RIC of **Lesvos** there were only three doctors present to cover the medical needs of an increased

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<sup>787</sup> Amnesty International, "Greece must immediately secure the free access of asylum seekers, unaccompanied minors, and children of undocumented migrants to the public healthcare system", 14 October 2019, available (in Greek) at: <https://bit.ly/372T4sz>.

<sup>788</sup> Article 55(2) IPA.

<sup>789</sup> Article 55(2) IPA.

<sup>790</sup> Efsyn, 'Medicines du Monde on children with chronic diseases who don't have AMKA', 29 January 2020, available in Greek at: <https://bit.ly/39bS5ri>.

<sup>791</sup> GCR, Intervention of the Ombudsman for the cancer patient without AMKA, 6 December 2019, available (in Greek) at: <https://bit.ly/2Sjledm>; Intervention of the Greek Ombudsman on the "Non issuance of AMKA to asylum seeker applicant of international protection – immediate need of hospitalisation of cancer patient" on 6 December 2019.

<sup>792</sup> MsF, 'MSF statement about access to healthcare for asylum seekers and undocumented people in Greece', 19 December 2019, available at: <https://bit.ly/2SjNEUM>.

population of 19,419 resident. At the same time, there were two ambulance drivers, even though the RIC does not have an ambulance,<sup>793</sup> thus further hindering applicants' access to the public healthcare system even in cases of emergency.

Meanwhile, attempts to cover the primary healthcare needs of the population throughout 2019 were to the largest extent covered by personnel provided by NGOs and/or other actors, who, however, are lack the authority for assessing vulnerabilities. As such, and amongst others, the average times for the assessment of vulnerabilities of newcomers ranged between 2-6 months in Lesbos, 1-8 months in Chios, 2-3 months in Samos, 3-4 months in Leros and 4 months in Kos.<sup>794</sup>

In a welcome development, the publication of the Joint Ministerial Decision for the issuance of the PAAYPA was issued on 31 January 2020,<sup>795</sup> officially triggering the mechanism, whose implementation remains to be seen. The activation of the PAAYPA number has been announced in April 2020.<sup>796</sup>

As noted by UNHCR (December 2019), "Asylum-seekers may now have access to medical services with a new temporary health card, however full implementation of this provision falls short. EODY's staffing capacity was overall reinforced with incoming staff, but the reception centres on the islands and Evros continue to lack doctors and interpreters – both a major obstacle to the provision of medical services and psychosocial support."<sup>797</sup>

## E. Special reception needs of vulnerable groups

### Indicators: Special Reception Needs

1. Is there an assessment of special reception needs of vulnerable persons in practice?  
 Yes       In some cases       No

The law provides that, when applying the provisions on reception conditions, competent authorities shall take into account the specific situation of vulnerable persons such as minors, unaccompanied or not, direct relatives of victims of shipwrecks (parents and siblings), disabled people, elderly people, pregnant women, single parents with minor children, persons with serious illnesses, persons with cognitive or mental disability and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, victims of female genital mutilation and victims of human trafficking.<sup>798</sup> The assessment of the vulnerability of persons entering irregularly into the territory takes place within the framework of the [Reception and Identification Procedure](#) and, since the entry into force of the IPA, on 1 January 2020, it is no longer connected to the assessment of the asylum application.<sup>799</sup>

Under the reception and identification procedure, upon arrival, the Head of the RIC "shall refer persons belonging to vulnerable groups to the competent social support and protection institution."<sup>800</sup>

However, shortages in the [Identification](#) of vulnerabilities, together with a critical lack of reception places on the islands (see [Types of Accommodation](#)) prevents vulnerable persons from enjoying special reception conditions. This could also be the case on the mainland, due to the limited capacity of facilities under the National Centre for Social Solidarity (EKKA), the lack of a clear referral pathway to access

<sup>793</sup> Information provided by the RIS in Lesbos, on 29 January 2020.

<sup>794</sup> Information provided by the RIS on 7 February 2020.

<sup>795</sup> Joint Ministerial Decision 717/2020, Gov. Gazette 199/B/31-1-2020.

<sup>796</sup> Skai.gr, Προσωρινός αριθμός ασφάλισης - περιθάλψης: Από σήμερα σε όλους τους αιτούντες άσυλο, 1 April 2020, available at: <https://bit.ly/3cjTyh4>.

<sup>797</sup> UNHCR, *Greece factsheet*. December 2019, available at: <https://bit.ly/3b97jzb>, p.4.

<sup>798</sup> Article 58(1) IPA.

<sup>799</sup> Article 58(2) IPA, citing Article 39 IPA.

<sup>800</sup> Article 39(4)(d) IPA.

temporary camps and the poor reception conditions reported in many of those. Moreover, the high occupancy rate of reception places under UNHCR scheme may deprive newly arriving vulnerable families and individuals from access this type of accommodation.

## 1. Reception of unaccompanied children

The Directorate General for Social Solidarity (DGSS) of the Ministry of Labour and Social Affairs<sup>801</sup> is the responsible authority for the protection, including the provision of reception conditions, of unaccompanied and separated minors.<sup>802</sup> The Directorate for the Protection of Unaccompanied Minors,<sup>803</sup> under the National Centre for Social Solidarity (*Εθνικό Κέντρο Κοινωνικής Αλληλεγγύης*, EKKA), receives and processes referrals for the accommodation of unaccompanied and separated children.

### 1.1. Persisting lack of reception capacity for unaccompanied children

As of 31 December 2019, there were 5,301 unaccompanied and separated children in Greece but only 1,286 places in long-term dedicated accommodation facilities, and 748 places in temporary accommodation.<sup>804</sup> As noted by UNHCR “[l]iving conditions for the 5,300 children who arrived alone in Greece are critical as only one in five has a place in an appropriate shelter... In the reception centres, the 2,200 boys and girls who are unaccompanied face grave risks of exploitation and abuse. Their transfer to a shelter suitable for their age is lengthy adding to the hardship of fleeing conflict and persecution.”<sup>805</sup>

The total number of referrals of unaccompanied children received by EKKA in 2019 was 9,816, marking an increase of 2,844 when compared to the same period in 2018. At the same time, the number of long term accommodation spaces, specifically designated for unaccompanied minors, was increased by only 224 places throughout the year.

The average waiting period for the placement of unaccompanied minors residing in and/or outside of island RICs to suitable accommodation places for UAMs in 2019 was 6.6 months. This was similar for unaccompanied minors in Evros RIC, with an average of 6 months.

More precisely, the average waiting time for the placement of UAMs from RICs to an accommodation place for UAMs by the end of 2019, is as follows:

Locations	Average time for the placement to a shelter for UAMs
RIC Lesbos	6 months (3 months in case of high vulnerability)
RIC Chios	8 months
RIC Samos	6 months
RIC Kos	6 months
RIC Leros	7 months
RIC Evros	6 months

Information provided by the Ministry of Migration and Asylum Special Secretariat for Reception, 6 February 2020.

<sup>801</sup> Formerly under the Ministry of Labour, Social Security and Social Solidarity, which was renamed following the July 2019 reforms introduced through P.D. 81/2019.

<sup>802</sup> Article 22(3) L 4540/2018.

<sup>803</sup> Established with article 27(1) of L. 4554/2018.

<sup>804</sup> EKKA, *Situation Update: Unaccompanied Children (UAC) in Greece*, 31 December 2019, available at: <https://bit.ly/37YhbJX>.

<sup>805</sup> UNHCR, *Factsheet: Greece*, December 2019, available at: <https://bit.ly/2UkNxea>, p.3.

The lack of appropriate care, including accommodation for unaccompanied children, in Greece has been repeatedly raised by human rights bodies.<sup>806</sup> Among others in 2019, in the context of his visit to the Lesbos, the UN High Commissioner for Refugees stated he was “very worried about children, especially children travelling alone...[who] are the most exposed to violence and exploitation”,<sup>807</sup> while Human Rights Watch *inter alia* noted that “the lack of prompt transfers [from the islands] put vulnerable people, including people with invisible disabilities and children, at higher risk of abuse and violation of their rights”.<sup>808</sup>

In November 2018, ECRE and ICJ, with the support of GCR lodged a collective complaint before the European Committee for Social Rights of the Council of Europe with regards the situation of *inter alia* unaccompanied children in Greece.<sup>809</sup> In response to the complaint, In May 2019, the Committee on Social Rights exceptionally decided to indicate immediate measures to Greece to protect the rights of migrant children and to prevent serious and irreparable injury or harm to the children concerned, including damage to their physical and mental health, and to their safety, by *inter alia* removing them from detention and from Reception and Identification Centres (RICs) at the borders.<sup>810</sup>

Furthermore, in December 2019, in a case represented by GCR, in cooperation with ASGI, Still I Rise and Doctors Without Borders, the European Court of Human Rights (ECtHR), under Rule 39 of the Rules of Court, granted interim measures to five unaccompanied teenagers, asylum seekers, who had been living for many months in the Reception and Identification Centre (RIC) and in the "jungle" of Samos. The interim measures indicated to the Greek authorities their timely transfer to a centre for unaccompanied minors and to ensure that their reception conditions are compatible with Article 3 of the Convention (prohibition of torture and inhuman and degrading treatment) and the applicants' particular status.<sup>811</sup>

In March 2020, a number of EU Member States have accepted to relocate a number of about 1,600 unaccompanied children from Greece.<sup>812</sup> Despite the fact that the number of children to be relocated remains significantly low, compared to the number of unaccompanied children present in Greece (5,379 children as of 29 February 2020), this could be an important precedent.

## 1.2. Types of accommodation for unaccompanied children

Out of the total number of available places for unaccompanied children in Greece at the end of 2019:

- 1,352 were in 52 shelters for unaccompanied children;
- 136 places were in 34 Supported Independent Living apartments for unaccompanied children over the age of 16;
- 300 places were in 10 Safe Zones for unaccompanied children in temporary accommodation centres; and

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<sup>806</sup> For instance, see UNHCR, ‘Lone children face insecurity on the Greek islands’, 14 October 2019, available at: <https://bit.ly/36XQ6pf>.

<sup>807</sup> Euronews, ‘U.N. refugees chief urges Greece to improve ‘miserable’ camp conditions’, 27 November 2019, available at: <https://bit.ly/2vWsjt3>.

<sup>808</sup> HRW, ‘Human Rights Watch Submission to the United Nations Committee against Torture on Greece’, 4 July 2019, available at: <https://bit.ly/2S5ewch>.

<sup>809</sup> Council of Europe, ‘New complaint registered concerning Greece’, 21 December 2018, available at: <https://bit.ly/2SG0FpF>.

<sup>810</sup> European Committee of Social Rights, Decision on admissibility and on immediate measures in the case International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, 23 May 2019, available at: <https://bit.ly/39clrGj>.

<sup>811</sup> GCR, The European Court of Human Rights provides interim measures to unaccompanied minors living in the RIC and the "jungle" of Samos island, 30 December 2019, available at: <https://bit.ly/2GYQY2p>.

<sup>812</sup> EU Commissioner for Home Affairs, Intervention (via video conference) in European Parliament LIBE Committee on the situation at the Union’s external borders in Greece, 2 April 2020, available at: <https://bit.ly/3adzSKl>.

- 541 places were in 14 hotels for unaccompanied children.<sup>813</sup>

**Shelters for unaccompanied children:** long-term and short-term accommodation facilities for unaccompanied children (shelters) are managed by civil society entities and charities as well as and with the support of IOM. There is only one shelter, operating by a non-profit, public institution established as a legal person governed by private law and supervised by the Ministry of Education, Research and Religious Affairs, the Youth and Lifelong Learning Foundation (INEDIVIM),

**Supported Independent Living:** “Supported Independent Living for unaccompanied minors” is an alternative housing arrangement for unaccompanied children aged 16 to 18 launched in 2018. The programme includes housing and a series of services (education, health etc.) and aims to enable the smooth coming of age and integration to Greek society.<sup>814</sup>

**Safe zones in temporary accommodation centres:** Safe zones are designated supervised spaces within temporary open accommodation sites dedicated to unaccompanied children. They should be used as a short-term measure to care for unaccompanied minors in light of the insufficient number of available shelter places, for a maximum of 3 months. Safe zone priority is given to unaccompanied children in detention as well as other vulnerable children.

**Hotels for unaccompanied children:** Hotels are emergency accommodation spaces being used as a measure to care for unaccompanied children in light of the insufficient number of available shelter places. Priority is given to children in RIC.

## F. Information for asylum seekers and access to reception centres

### 1. Provision of information on reception

According to Article 43(1) IPA, competent authorities shall inform the applicant, within 15 days after the lodging of the application for international protection, of his or her rights and the obligations with which he or she must comply relating to reception conditions, by providing an informative leaflet in a language that the applicant understands. This material must provide information on the existing reception conditions, including health care, as well as on the organisations that provide assistance to asylum seekers.<sup>815</sup> If the applicant does not understand any of the languages in which the information material is published or if the applicant is illiterate, the information must be provided orally, with the assistance of an interpreter.<sup>816</sup>

A number of actors are providing information to newly arrived persons on the islands and the mainland. However, as also mentioned in [Provision of Information on the Procedure](#), access to comprehensive information remains a matter of concern, especially in the context of asylum, due to the expanded set of obligations and penalties that can be imposed on applicants based on the IPA.

In any event, information on reception should take into account with the actual available reception capacity, the availability and the accessibility of referral paths to reception facilities and other services and the legal obligations imposed on the applicants, i.e. mainly the obligation to remain on a given island for those subject to EU-Turkey statement.

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<sup>813</sup> EKKA, *Situation Update: Unaccompanied Children (UAC) in Greece*, 31 December 2019, available at: <https://bit.ly/2GqIZf0>.

<sup>814</sup> Metadrasi, *Supported Independent Living for unaccompanied minors*, available at: <https://bit.ly/2tPEIjv>.

<sup>815</sup> Article 43(2) IPA.

<sup>816</sup> Article 43(3) IPA.

## 2. Access to reception centres by third parties

### Indicators: Access to Reception Centres

1. Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?  
 Yes  With limitations  No

According to the former Article 18(2)(b) L 4540/2018, now Article 56 (2)(b) IPA, asylum seekers in reception facilities have the right to be in contact with relatives, legal advisors, representatives of UNHCR and other certified organisations. These shall have unlimited access to reception centres and other housing facilities in order to assist applicants. The Director of the Centre may extend access to other persons as well. Limitations to such access may be imposed only on grounds relating to the security of the premises and of the applicants.

Access of NGOs to temporary accommodation centres and Reception and Identification Centres is subject to prior official authorisation.

## G. Differential treatment of specific nationalities in reception

No generalised differential treatment on the basis of nationality has been reported in 2019, though as has been the case in previous years, the so-called “pilot project” implemented by the police on the islands of Lesbos and Kos has continued being in effect, resulting in the detention upon arrival of so-called ‘low-refugee profile’ applicants (i.e. nationals and/or previous residents from countries with less than 25% average recognition rates throughout the EU).<sup>817</sup>

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<sup>817</sup> Inter alia see GCR & SCI, *Borderlines of Despair: First-line reception of asylum seekers at the Greek borders*, 25 May 2018, available at: <https://bit.ly/397zY5M>; HIAS, *Locked up without rights: Nationality-based detention in the Moria refugee camp*, December 2019, available at: <https://bit.ly/381UiFG>.



## Detention of Asylum Seekers

### A. General

#### Indicators: General Information on Detention

1. Total number of asylum seekers detained in pre-removal centres in 2019: <sup>818</sup>	23,348
2. Number of asylum seekers in pre-removal detention at the end of 2019:	2,259
3. Number of pre-removal detention centres:	8
4. Total capacity of pre-removal detention centres:	4,683

As already mentioned, following the July 2019 elections, a more restrictive policy on migration and asylum, with a particular focus on detention has been announced.<sup>819</sup> The IPA voted in November 2019, and currently in force introduced extensive provisions on the detention of asylum seekers<sup>820</sup> and lower significant guarantees for the imposition of detention measures against asylum applicants, threatening to undermine the principle that detention of asylum seekers should only be applied exceptionally and as a measure of last resort.

The amendments introduced by the IPA with regards the detention of asylum seekers include:

- **The possibility of detaining asylum seekers even when they apply for international protection when not detained, on the basis of an extensive list of grounds justifying detention.**<sup>821</sup>

Art. 46(2) IPA provides that an asylum seeker who has already applies for asylum at liberty may be detained:

- (a) in order to determine or verify his or her identity or nationality or origin;
- (b) in order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant;
- (c) when there is a risk of national security or public order;
- (d) when there is a significant risk of absconding within the meaning of Art. 2(n) of Regulation (EU) 604/2013 and in order to ensure the implementation of the transfer procedure in accordance with the Dublin Regulation;
- (f) in order to decide, in the context of a procedure, on the applicant's right to enter the territory;

- **The extension of the maximum time limits for the detention of asylum seekers.**

According to Article 46 (5) IPA, the detention of an asylum seeker can be imposed for an initial period up to 50 days and it may be successively prolonged up a maximum time period of 18 months. Furthermore, according to Art. 46(5) IPA, the detention period in view of removal (return/deportation etc) is not calculated in the total time, and thus the total detention period of a third country national within the migration context may reach 36 months (18 months while the asylum procedure + 18 months in view of removal).

The possibility to extend the period of detention of asylum seekers up to 18 months, raises serious concerns as of its compliance with the obligation as a rule to impose asylum detention "only for

<sup>818</sup> Information provided by the Directorate of the Hellenic Police, 08 February 2020. This figure only includes pre-removal centres.

<sup>819</sup> Amnesty International, Annual Report 2019, Greece, Idem.

<sup>820</sup> UN High Commissioner for Refugees (UNHCR), "UNHCR urges Greece to Strengthen Safeguards in Draft Asylum Law," 24 October 2019, available at: <https://bit.ly/2lzauTV>.

<sup>821</sup> Article 46(2) IPA.

as short a period as possible” and to effectuate asylum procedures with “due diligence” in virtue of Article 9 Directive 2013/33/EU.

- **The abolition of the safeguard to impose the detention of an asylum seeker only upon a prior recommendation of the Asylum Service.**

L. 4375/2016 provided that the detention of an asylum seeker could only be imposed following a prior relevant recommendation of the Asylum Service, with the exception of cases that detention was ordered on public order grounds, in which the detention could be ordered directly by the Police Director. Art. 46(4) IPA abolished the requirement of a recommendation issued by the Asylum Service and provides that the detention of an asylum seeker on any ground is imposed directly by the Police upon prior information of the Asylum Service. As the Asylum Service is the only authority that may assess the need of detention based on the specific elements of the application and substantiate the grounds for detention as required by law, said amendment raises concerns *inter alia* as of the respect of the obligation for an individual assessment and the principle of proportionality before the detention of an asylum applicant.

In late November 2019, the Greek authorities announced their intention to dramatically increase the detention capacity, in particular on the Aegean islands, by creating more than 18,000 detention places on the islands, and by imposing automatic detention upon arrival to all new arrivals.<sup>822</sup>

In May 2020, further amendments have been introduced to the legal framework of detention.<sup>823</sup> As noted by UNHCR with regards the May 2020 amendment “the combination of reduced procedural safeguards with provisions related to the detention of asylum seekers and to the detention of those under forced return procedures, compromises the credibility of the system and is of high concern to UNHCR. The current Draft Law further extends the practice of detention, which is essentially turned into the rule while it should be the exception, both for asylum seekers and those under return. For the latter it should be noted that they may not have had an effective access to the asylum process or may have gone through an asylum process with reduced procedural safeguards”.<sup>824</sup>

No measures with regards the decongestion of detention facilities and the reduction of the number of detainees have been taken during the COVID-19 outbreak.<sup>825</sup> The proportionality/necessity of the detention measures have not been re-examined, despite the suspension of the returns to a numbers of country of origin or destination, including Turkey, and the delays occurred due to the suspension of the work of the Asylum Service, during the COVID-19 crisis.<sup>826</sup>

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<sup>822</sup> GCR, The announcements of the Greek Authorities are contrary to Greek and international law on refugees”, 21 November 2019, available at: <https://bit.ly/32PCmfQ> (in Greek).

<sup>823</sup> L. 4686/2020, Gov. Gazette A' 96/12.05.2020.

<sup>824</sup> UNHCR, UNHCR’s Intervention at the hearing for actors to the Standing Committee of Public Administration, Public Order and Justice of the Hellenic Parliament regarding the Draft Law on the Improvement of Migration Legislation, *idem*.

<sup>825</sup> See to this regard: Letter sent by the Greek Ombudsman on 20 March 2020 by which the Ombudsman recommend to the authorities *inter alia* to take measures for the degongestation of detetnion faciltiies amid the Covid 19 outbreak, Greek Ombudsman, Μέτρα πρόληψης της διάδοσης του κορωνοϊού COVID-19 και ευάλωτες ομάδες πληθυσμού, 30 March 2020, available at: <https://bit.ly/2ydLDmS>; GCR et al., Έκτακτη η ανάγκη προστασίας των διοικητικά κρατούμενων πολιτών τρίτων χωρών εν μέσω πανδημίας, 24 April 2020, available at: <https://bit.ly/36igzyX>.

<sup>826</sup> See: Commissioner for Human Rights of the Council of Europe, Commissioner calls for release of immigration detainees while Covid-19 crisis continues, 26 March 2020.

## 1. Statistics on detention

The total number of third-country nationals detained at the end of 2019 was 3,869. Of these, 1,021 persons (26.3%) were detained in police stations.<sup>827</sup> Furthermore, at the end of 2019, there were 98 unaccompanied children in detention (“protective custody”) in the pre-removal detention centre of **Amygdaleza**<sup>828</sup> and 97 in police stations around Greece<sup>829</sup>. Moreover 391 persons remained in *de facto* detention in Evros RIC as of 31 December 2019.<sup>830</sup>

### 1.1. Detention in pre-removal centres

The number of asylum seekers detained in pre-removal detention facilities in Greece increased considerably in 2019, while the total number of persons detained slightly decreased.

Administrative detention: 2016-2019				
	2016	2017	2018	2019
Number of asylum seekers detained	4,072	9,534	18,204	23,348
Total number of persons detained	14,864	25,810	31,126	30,007

Source: Directorate of the Hellenic Police, 21 January 2017; 29 January 2018; 23 January 2019; 8 February 2020.

The number of persons who remained in pre-removal detention facilities was 2,848 at the end of 2019. Of those, 2,259 were asylum seekers.<sup>831</sup> The breakdown of detained asylum seekers and the total population of detainees per pre-removal centre is as follows:

Breakdown of asylum seekers detained by pre-removal centre: 2019				
	Detentions throughout 2019		In detention at the end of 2019	
	Asylum seekers	Total population	Asylum seekers	Total population
Amygdaleza	4,489	7,290	274	606
Tavros (Petrou Ralli)	1,035	2,957	82	170
Corinth	3,287	3,362	1,004	1,048
Paranesti, Drama	2,994	3,052	455	473
Xanthi	1,767	1,997	197	200
Fylakio, Orestiada	8,234	9,539	14	111
Lesvos	600	661	73	79
Kos	942	1,149	161	160
<b>Total</b>	<b>23,348</b>	<b>30,007</b>	<b>2,260</b>	<b>2,847</b>

Source: Directorate of the Hellenic Police 08 February 2020.

Although the number of persons detained the past years has significantly increased, this has not been mirrored by a corresponding increase in the number of forced returns. 58,597 detention orders were issued in 2019, compared to 32,718 in 2018. However, the number of forced returns decreased to 4,868 in 2019 from 7,776 in 2018.<sup>832</sup> These findings corroborate that immigration detention is not only linked with human rights violations but also fails to effectively contribute to return.

<sup>827</sup> Information provided by the Directorate of the Hellenic Police, 08 February 2020.

<sup>828</sup> Information provided by the Directorate of the Hellenic Police, 08 February 2020.

<sup>829</sup> EKKA, *Situation update: Unaccompanied children in Greece*, 31 December 2019, available at <https://bit.ly/38h6Nx4>.

<sup>830</sup> Information provided by RIS, 6 February 2020.

<sup>831</sup> Information provided by the Directorate of the Hellenic Police, 08 February 2020.

<sup>832</sup> Ombudsman, *Return of third-country nationals*, Special Report 2018, available at <https://bit.ly/3bv0GYm>; Information provided by the Directorate of the Hellenic Police, 23 January 2019 and 8 February 2020.

There were 8 active pre-removal detention centres in Greece at the end of 2019. This includes six centres on the mainland (**Amygdaleza, Tavros, Corinth, Xanthi, Paranesti, Fylakio**) and two on the islands (**Lesvos, Kos**). The total pre-removal detention capacity is 4,683 places. A new pre-removal detention centre established in **Samos** in 2017 is not yet operational.

The number of persons lodging an asylum application from detention in 2019 was 7,738 up from 7,200 in 2018:

Asylum seekers applying from detention: 2019	
Nationality	Number
Pakistan	3,021
Afghanistan	1,258
Bangladesh	1,158
Iran	522
Egypt	346
Others	1,433
<b>Total</b>	<b>7,738</b>

Source: Asylum Service.

The Asylum Service took 2,845 first instance decisions on applications submitted from detention, of which 2,667 were negative (93.8%), 139 granted refugee status and 39 granted subsidiary protection.<sup>833</sup>

The Asylum Service also received 773 subsequent applications from detention in 2019. 145 of those were deemed admissible and 359 inadmissible.<sup>834</sup>

## 1.2. Detention in police stations and holding facilities

In addition to the above figures, at the end of 2019, there were 1,021 persons, of whom 212 were asylum seekers, detained in several other detention facilities countrywide such as police stations, border guard stations etc.<sup>835</sup>

As stated above, according to EKKA there were 195 unaccompanied children in protective custody in detention facilities at the end of 2019, 98 of whom in a pre-detention centre in Amygdaleza PRDF (Athens) and 97 in other detention facilities, including police stations.<sup>836</sup>

As the ECtHR has found, these facilities are not in line with Art. 3 ECHR's guarantees given "the nature of police stations per se, which are places designed to accommodate people for a short time only".<sup>837</sup>

## 2. Detention policy following the EU-Turkey statement

The launch of the implementation of the EU-Turkey statement has had an important impact on detention on the Eastern Aegean islands but also on the mainland, resulting in a significant toughening of the practices applied in the field. In 2019, a total of 79,108 removal decisions were issued, 58,597 (74%) of which also contained a detention order. The number of third-country nationals detained in pre-removal

<sup>833</sup> Information provided by the Asylum Service, 17 February 2020.

<sup>834</sup> *Ibid.*

<sup>835</sup> Information provided by the Directorate of the Hellenic Police, 8 February 2020.

<sup>836</sup> EKKA, *Situation update: Unaccompanied children in Greece*, 31 December 2019, available at: <https://bit.ly/38h6Nx4>.

<sup>837</sup> *H.A. and Others v. Greece*, application no. 19951/16, 28 February 2019; *S.Z. v. Greece*, application no. 66702/13, 21 June 2018, para. 40.

centres under detention order throughout 2019 was 30,007, a slight decrease from 31,126 in 2018. The numbers of asylum seekers in detention though, increased significantly: 23,348 in 2019, compared to 18,204 in 2018 and 9,534 in 2017.<sup>838</sup>

The pre-removal detention centre of Moria in **Lesvos**, initially established in 2015,<sup>839</sup> was reopened in mid-2017. In addition, a pre-removal detention facility was opened in **Kos** in March 2017,<sup>840</sup> and another one was established in **Samos** in June 2017 but has not yet become operational.<sup>841</sup>

On 20 November 2019, the Greek government presented its operational plan to address migration and ‘decongest’ the Aegean islands, following a post-election commitment. The major announcement was that the existing ‘hotspot’ camps on the Greek islands, will be gradually turned into closed facilities and additional detention capacity, of more 18,000 places will be created on the islands.<sup>842</sup>

## 2.1. Pilot project (“low-profile scheme”)

At the end of 2019, the “pilot project”, launched in 2017 is still being implemented on **Lesvos**, **Kos** and partly **Leros**. This consists in newly arrived persons belonging to particular nationalities with low recognition rates immediately being placed in detention upon arrival and remaining there for the entire asylum procedure.<sup>843</sup> While the project initially focused on nationals of Pakistan, Bangladesh, Egypt, Tunisia, Algeria and Morocco, the list of countries was expanded to 28 in March 2017 and the pilot project was rebranded as “low-profile scheme”.<sup>844</sup> As of May 2018, the “pilot project” was implemented to nationals of countries with a recognition rate lower than 25% on **Lesvos**, whereas the recognition rate threshold for the implementation of the “pilot project” is 33% on **Kos**.<sup>845</sup> This was still the case in 2019.

The implementation of this practice raises concerns vis-à-vis the non-discrimination principle and the obligation to apply detention measures only as a last resort, following an individual assessment of the circumstances of each case and to abstain from detention of *bona fide* asylum seekers.

As mentioned by GCR on Lesvos island “every month, we represent asylum seekers who have been detained inside the ‘hotspot,’ upon arrival, only on the basis of their gender and nationality. This goes against the principle of non-discrimination and the individual assessment of asylum claims. Sometimes, those detainees are about to be returned, although they have had no access to a doctor who could have identified a vulnerability and were not informed about their rights and options by a lawyer”.<sup>846</sup>

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<sup>838</sup> Information provided by the Directorate of the Hellenic Police, 8 February 2020.

<sup>839</sup> Joint Ministerial Decision 8038/23/22-ιγ’, Gov. Gazette B’ 118/21.1.2015; Joint Ministerial Decision 8038/23/22-να’, Gov. Gazette B’ 2952/31.12.2015.

<sup>840</sup> Joint Ministerial Decision 8038/23/22-ξε, Gov. Gazette B’ 332/7.2.2017.

<sup>841</sup> Joint Ministerial Decision 3406/2017, Gov. Gazette B’ 2190/27.6.2017.

<sup>842</sup> Oxfam and GCR, *No-Rights Zone. How people in need of protection are being denied crucial access to legal information and assistance in the Greek islands’ EU ‘hotspot’ camps*, December 2019, available at: <https://go.aws/2SIyeea>, page 8; Greek Government, 20 November 2019, Policy Editors’ Briefing –the Government’s Action Plan to address the Migration Issue [in Greek], available at: <https://bit.ly/2P3kb0k>; See also the letter sent on 25 November 2019 by the Commissioner for Human Rights of the Council of Europe to the Ministers Mr Chrysochoidis and Koumoutsakos, regarding the Government’s plans on the closed centres, available at: <https://bit.ly/2wn3MgH>.

<sup>843</sup> GCR, *Borderline of Despair: First-line reception of asylum seekers at the Greek borders*, May 2018, available at: <https://bit.ly/2OuXoeG>, 18-19.

<sup>844</sup> ECRE, ‘Asylum procedure based on nationality rather than on merit – the situation of Pakistani asylum applicants under the EU Turkey Deal’, 8 December 2017, available at: <http://bit.ly/2kEjTk1>.

<sup>845</sup> GCR, *2018 Detention report*, available at: <https://bit.ly/2vrqDHm>.

<sup>846</sup> Oxfam and GCR, *No-Rights Zone etc.*, Idem, p. 6.

## 2.2. Detention following second-instance negative decision

Applicants on the islands whose asylum application is rejected at second instance under the **Fast-Track Border Procedure** are immediately detained upon notification of the second-instance negative decision. This practice directly violates national and European legislation, according to which less coercive alternative measures should be examined and applied before detention. While in detention, rejected asylum seekers face great difficulties in accessing legal assistance and challenging the negative asylum decision before a competent court.

## 2.3. Detention due to non-compliance with geographical restriction

As set out in a Police Circular of 18 June 2016, where a person is detected on the mainland in violation of his or her obligation to remain on the islands, “detention measures will be set again in force and the person will be transferred back to the islands for detention – further management (readmission to Turkey).”<sup>847</sup> Following this Circular, all newly arrived persons who have left an Eastern Aegean island in breach of the geographical restriction (see **Freedom of Movement**), if arrested, are immediately detained in order to be returned to that island. This detention is applied without any individual assessment and without the person’s legal status and any potential vulnerabilities being taken into consideration. Detention in view of transfer from mainland Greece to the given Eastern Aegean island can last for a disproportionate period of time, in a number of cases exceeding five months, thereby raising issues with regard to the state’s due diligence obligations. Despite the fact that a number of persons allege that they left the islands due to unacceptable reception conditions and/or security issues, no assessment of the reception capacity is made before returning these persons to the islands. GCR handled the cases of five people of Palestinian origin, with a geographical restriction in Leros, claiming to have fled the island, due to the unacceptable conditions prevailing in the RIC, who remained in detention in Amygdaleza PRDF, waiting to be transferred back to Leros, for a period ranging from three to six months.<sup>848</sup>

In May 2019, the Administrative Court of Piraeus, ordered the release from detention of a woman of Syrian origin, detained in the PROKEKA of Tavros, for the purpose of being transferred back to Kos, on the basis that her fragile health would deteriorate if her detention continued.<sup>849</sup>

In practice, persons returned to the islands either remain detained – this is in particular the case of single men or women – or they are released without any offer of an accommodation place. Detention on the islands is of particular concern as a high number of third-country nationals, including asylum seekers, continue to be held in detention facilities operated by the police directorates and in police stations, which are completely inappropriate for immigration detention. As a rule this is the case in **Chios, Samos, Leros and Rhodes** where police stations were the only available facility for immigration detention in 2019. For those released upon return to the islands, destitution is a considerable risk, as reception facilities on the islands are often overcrowded and exceed their nominal capacity, whereas in Rhodes there is no RIC at all.

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<sup>847</sup> Directorate of the Hellenic Police, “Εγκύκλιος ΕΛΑΣ 1604/16/1195968/18-6-2016 Διαχείριση παράτυπων αλλοδαπών στα Κέντρα Υποδοχής και Ταυτοποίησης, διαδικασίες Ασύλου, υλοποίηση Κοινής Δήλωσης ΕΕ-Τουρκίας της 18ης Μαρτίου 2016 (πραγματοποίηση επανεισδοχών στην Τουρκία)”, available in Greek at: <http://bit.ly/2ngIEj6>. See also *inter alia* Kathimerini, ‘Islands “suffocating” due to the refugee issue’, 23 August 2016, available in Greek at: <http://bit.ly/2jBL7Fd>.

<sup>848</sup> GCR, document no. 362/2019, 10 September 2019.

<sup>849</sup> Administrative Court of Piraeus, Decision AP 221/2019.

In 2019, a total of 551 persons were returned to the Eastern Aegean islands after being apprehended outside their assigned island, up from 514 in 2018:

Returns to the islands due to non-compliance with a geographical restriction: 2019						
Lesvos	Chios	Samos	Kos	Leros	Rhodes	Total
127	72	111	197	44	0	551

Source: Directorate of the Hellenic Police 8 February 2020.

## B. Legal framework of detention

### 1. Grounds for detention

#### Indicators: Grounds for Detention

- In practice, are most asylum seekers detained
  - ❖ on the territory:  Yes  No
  - ❖ at the border:  Yes  No
- Are asylum seekers detained in practice during the Dublin procedure?<sup>850</sup>
  - Frequently  Rarely  Never
- Are asylum seekers detained during a regular procedure in practice?
  - Frequently  Rarely  Never

#### 1.1. Asylum detention

Up until the end of 2019, the relevant provision regulating the detention of asylum seekers was Article 46 L 4375/2016, abolished by IPA, in force since 1 January 2020.<sup>851</sup>

According to this provision, an asylum seeker shall not be detained on the sole reason of seeking international protection or having entered and/or stayed in the country irregularly.<sup>852</sup> In addition, Law 4375/2016 did not allow for the detention of a person applying for asylum at liberty. An asylum seeker could only remain detained if he or she was already detained for the purpose of removal when he or she applied for international protection, and was subject to a new detention order, following an individualised assessment to establish whether detention could be ordered on asylum grounds.<sup>853</sup>

An asylum seeker may only remain in detention if he or she is already detained for the purpose of removal when he or she makes an application for international protection, and subject to a new detention order following an individualised assessment to establish whether detention can be ordered on asylum grounds.<sup>854</sup> In this case the asylum seeker may be kept in detention for one of the following 5 grounds:<sup>855</sup>

- (a) in order to determine his or her identity or nationality;
- (b) in order to determine those elements on which the application for international protection is based which could not be obtained otherwise, in particular when there is a risk of absconding of the

<sup>850</sup> This is the case where a person has asked for asylum while already in detention (and is then subject to Dublin III Regulation usually because a family member has been residing as an asylum seeker in another member-state). On the contrary, this does not mean that if a person submits an asylum application for which another Member State is responsible under Dublin III Regulation will then be detained in order for the transfer to successfully take place.

<sup>851</sup> Asylum Detention in IPA is regulated by Art 46 and 47 IPA.

<sup>852</sup> Article 46(1) L 4375/2016.

<sup>853</sup> Article 46 L 4375/2016.

<sup>854</sup> Article 46(2) L 4375/2016. As stated above, the IPA, in effect from 1/1/2020, maintains this provision, and adds the possibility for asylum seekers applying at liberty to be placed in detention, article 46 IPA.

<sup>855</sup> Article 46(2).

- applicant;
- (c) when it is ascertained on the basis of objective criteria, including that he or she already had the opportunity to access the asylum procedure, that there are reasonable grounds to believe that the applicant is making the application for international protection merely in order to delay or frustrate the enforcement of a return decision, if it is probable that the enforcement of such a measure can be affected;
  - (d) when he or she constitutes a danger for national security or public order;
  - (e) when there is a serious risk of absconding of the applicant, in order to ensure the enforcement of a transfer decision according to the Dublin III Regulation.

For the establishment of a risk of absconding for the purposes of detaining asylum seekers on grounds (b) and (e), the law refers to the definition of “risk of absconding” in pre-removal detention.<sup>856</sup> The relevant provision of national law includes a non-exhaustive list of objective criteria which may be used as a basis for determining the existence of such a risk, namely where a person:<sup>857</sup>

- ❖ Does not comply with an obligation of voluntary departure;
- ❖ Has explicitly declared that he or she will not comply with the return decision;
- ❖ Is in possession of forged documents;
- ❖ Has provided false information to the authorities;
- ❖ Has been convicted of a criminal offence or is undergoing prosecution, or there are serious indications that he or she has or will commit a criminal offence;
- ❖ Does not possess travel documents or other identity documents;
- ❖ Has previously absconded; and
- ❖ Does not comply with an entry ban.

The fact that national legislation includes a non-exhaustive and indicative list of such criteria and thus other criteria not explicitly defined by law can also be used for determining the existence of the “risk of absconding”, is not in line with the relevant provision of the EU law providing that said objective criteria “*must be defined by law*”.<sup>858</sup>

Article 46(2) L 4375/2016 also provided that such a detention measure should be applied exceptionally, after an individual assessment and only as a measure of last resort where no alternative measures can be applied. A new detention order should be also issued by the competent police authority,<sup>859</sup> which must be fully and duly substantiated.<sup>860</sup>

With the exception of the “public order” ground, a detention order under L 4375/2016 is issued following a recommendation (*εισήγηση*) by the Head of the Asylum Service. However, the final decision on the detention lies with the Police. The Asylum Service made 17,630 recommendations in 2019, of which 5,933 recommended the prolongation of detention and 10,972 advised against detention. Also, 725 recommendations for the continuation of detention were revoked.<sup>861</sup>

The IPA reiterates the provision on the possibility of detaining asylum seekers who apply for asylum while

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<sup>856</sup> Article 18(g) L 3907/2011, cited by Article 46(2)(b) and (e) L 4375/2016. This is also the case in IPA, see Art. 46(2-b) and 46(3-b).

<sup>857</sup> Article 18(g)(a)-(h) L 3907/2011.

<sup>858</sup> Article 3(7) Directive 2008/115/EC; see also *mutandis mutandis* CJEU, C-528/15, *Al Chodor*, 15 March 2017, para. 47, “Article 2 (n), in conjunction with Article 28 (2) of the Dublin III Regulation, has the meaning that it requires the Member States to lay down, by means of a binding provision of general application, the objective criteria on the basis of which it is assumed that there is a risk of absconding of the applicant being subjected to a transfer procedure. The absence of such a provision renders Article 28 (2) of that regulation inapplicable”.

<sup>859</sup> That is the Aliens Division Police Director of Attica or Thessaloniki in cases falling under the competence of the two General Police Directorates, or the relevant Police Director in other cases: Article 46(3) L 4375/2016.

<sup>860</sup> Article 46(3) L 4375/2016.

<sup>861</sup> Information provided by the Asylum Service, 17 February 2020.



in pre-removal detention on the same grounds as Article 46 L.4375/2016. However as mentioned above the IPA further foresees the possibility to detain asylum seekers who have already applied for asylum while at liberty.<sup>862</sup> In addition, the “recommendation” of the Asylum Service has been replaced with prior information by the IPA<sup>863</sup> (see above).

### 1.1.1. Detention of asylum seekers applying at liberty

The IPA, in force since 1 January 2020, provides for the possibility of detaining asylum seekers even when they apply for international protection when not detained, on the basis of any of the grounds provided by article 8 of the Directive 2013/33/EU. According to such grounds an applicant may be detained only:

- (a) in order to determine or verify his or her identity or nationality;
- (b) in order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant;
- (c) in order to decide, in the context of a procedure, on the applicant’s right to enter the territory;
- (d) when he or she is detained subject to a return procedure under Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (9), in order to prepare the return and/or carry out the removal process, and the Member State concerned can substantiate on the basis of objective criteria, including that he or she already had the opportunity to access the asylum procedure, that there are reasonable grounds to believe that he or she is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision;
- (e) when protection of national security or public order so requires;
- (f) in accordance with Article 28 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (10).

Upon until the entry into force of the IPA, article 46(2) L 4375/2016, Greek law allowed the detention of an asylum seeker only where the person in question submitted an asylum application while already in detention in view of removal, i.e. based on a deportation or a return decision. However, in practise, up until the end of 2019, asylum seekers who have applied for asylum at liberty in one of the Eastern Aegean islands and were subject to a geographical restriction were detained as a rule if arrested outside the assigned area in order to be transferred back in that island. In these cases, a detention order was imposed contrary to the guarantees provided by law for administrative detention and without their asylum seeker legal status being taken into consideration: the detention order was unlawfully issued based on L 3907/2011 and/or L 3386/2005, which refers to the deportation of irregularly staying third-country nationals to their country of origin, as these legal frameworks are not applied to asylum seekers. As it was also the case in previous years, in a case supported by GCR, the Administrative Court of Thessaloniki ordered the release from detention of a woman from Morocco, who was detained for the purpose of her transfer back to Chios on the basis that, *inter alia*, she is an asylum applicant and could not be detained for return purposes.<sup>864</sup>

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<sup>862</sup> Article 46(2) L 4375/2016.

<sup>863</sup> Article 36(4) IPA.

<sup>864</sup> Administrative Court of Thessaloniki, Decision 72/2019.

### 1.1.2. The interpretation of the legal grounds for detention in practice

There is a lack of a comprehensive individualised procedure for each detention case, despite the relevant legal obligation to do so. This is of particular concern with regard to the proper application of the lawful detention grounds provided by national legislation, as the particular circumstances of each case are not duly taken into consideration. Furthermore, the terms, the conditions and the legal grounds for the lawful imposition of a detention measure seem to be misinterpreted in some cases. These cases include the following:

#### **Detention on public order or national security grounds**

As repeatedly reported in previous years, public order grounds are used in an excessive and unjustified manner, both in the framework of pre-removal detention and detention of asylum seekers.<sup>865</sup> This continues to be the case. The Returns Directive does not cover detention on public order grounds,<sup>866</sup> and thus the relevant Greek provision on pre-removal detention – Article 30(1)(c) L 3907/2011 – is an incorrect transposition of EU law. For both detainees subject to removal and asylum seekers, detention on public order grounds is usually not properly justified.

The authorities issue detention orders without prior examination of whether the “applicant’s individual conduct represents a genuine, present and sufficiently serious threat”, in line with the case of law of the Council of State and the CJEU.<sup>867</sup> This is particularly the case where these grounds are based solely on a prior prosecution for a minor offence, even if no conviction has ensued, or in cases where the person has been released by the competent Criminal Court after the suspension of custodial sentences. The Ombudsman has once again in 2019 criticised this practice.<sup>868</sup> In a case supported by GCR in 2019, the Administrative Court of Athens accepted objections against the detention of a citizen of Bangladesh who was administratively detained in Kypseli police station, on the grounds that, *inter alia*, he was convicted to a 6-month suspended sentence, for selling small objects on the street, without permission. The Court declared, *inter alia*, that his conviction as a street vendor does not constitute a particular danger to the public order and ordered his release from detention.<sup>869</sup>

In addition, detention on national security or public order grounds has been also ordered for reasons of irregular entry into the territory, contrary to Article 31 of the Refugee Convention and the prohibition on detaining asylum seekers on account of their irregular entry or presence formerly under Article 46(1) L 4375/2016, now under Article 46(1) IPA.

Moreover, as the Ombudsman has highlighted on the practice of imposing detention on public order grounds solely based on a prior conviction by which custodial measures have been suspended, the mere suspensive effect of the sentence granted by the competent Criminal Court proves that the person is not considered a threat to public order, while his administrative detention on public order grounds raises questions of misuse of power on behalf of the police.<sup>870</sup>

#### **Detention of applicants considered to apply merely in order to delay or frustrate return**

The June 2016 Police Circular on the implementation of the EU-Turkey Statement provides that, for

<sup>865</sup> Ombudsman, *Return of third-country nationals*, Special Report 2018, available at: <https://bit.ly/37jgpGz>, 17.

<sup>866</sup> European Commission, *Return Handbook*, 27 September 2017, available at: <http://bit.ly/2niTCQ>, 78-79.

<sup>867</sup> CJEU, Case C-601/15 PPU *J.N.*, Judgment of 15 February 2016, paras 65-67. See e.g. Council of State, Decisions 427/2009, 1127/2009 and 2414/2008, which highlight that a mere reference to a criminal conviction does not suffice for the determination of a threat to national security or public order.

<sup>868</sup> Ombudsman, *Return of third-country nationals etc.*, *idem*.

<sup>869</sup> Administrative Court of Athens, Decision AP 528/2019.

<sup>870</sup> GCR, *2018 Detention Report*, available at: <https://bit.ly/2vrq> and Ombudsman, *Return of third-country nationals etc.*, *idem*.

applicants subject to the EU-Turkey statement who lodge their application while already in detention:

“[T]he Regional Asylum Offices will recommend the continuation of detention on the ground that: ‘there are reasonable grounds to believe that the applicant is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision, in accordance with art. 46(2)(c) L. 4375/2016 in view of his or her likely immediate readmission to Turkey.’”<sup>871</sup>

In practice, this exact wording is invoked in a significant number of detention orders to applicants subject to the EU-Turkey statement, following a relevant recommendation of the Asylum Service, despite the fact that Article 46(2)(c) L. 4375/2016, now Art. 46(3-c) IPA, requires the authorities to “substantiate on the basis of objective criteria... that there are reasonable grounds to believe” that the application is submitted “merely in order to delay or frustrate the enforcement of the return decision”.<sup>872</sup> Neither the detention order nor the Asylum Service recommendation are properly justified, as they merely repeat part of the relevant legal provision, while no objective criteria or reasonable grounds are invoked or at least deduced from individual circumstances. It should be noted that, as stated before, since a number of persons are immediately detained upon arrival under the “pilot project” / “low-profile scheme”, it is clear that these asylum seekers have not “already had the opportunity to access the asylum procedure” while at liberty, as required by the law.

## 1.2. Detention without legal basis or *de facto* detention

Apart from detention of asylum seekers under L 4375/2016 and pre-removal detention under L 3386/2005 and L 3907/2011, detention without legal basis in national law or *de facto* detention measures are being applied for immigration purposes. These cases include the following:

### 1.2.1. Detention pending transfer to RIC

According to Article 14 (1) L 4375/2016, now 39(1) IPA, newly arrived persons “shall be directly led, under the responsibility of the police or port authorities ... to a Reception and Identification Centre.” However and due to the limited capacity of Fylakio RIC, and depending on the number of the flows though the Greek-Turkish land border in **Evros**, delays occur in the transfer of the newly arrived to the RIC of Fylakio, and they remain in detention while awaiting their transfer ranging from a few days to periods exceeding one month. This detention has no legal basis. As UNHCR describes, “new arrivals, including families and children, once detected and apprehended by the authorities may be firstly transferred to a border guard police station or the pre-removal centre in Fylakio, adjacent to the RIC, where they remain in detention (so called ‘pre-RIC detention’) pending their transfer to the RIC Fylakio. Prolonged ‘pre-RIC detention’ has occurred in instances where new arrivals surpassed the accommodation capacity of RIC Fylakio”.<sup>873</sup>

As far as GCR is aware, by the end of 2019 this practice has been diminished. This may be due to the decrease in the arrests of undocumented entry on the northern land border with Turkey (8,497 in 2019 compared to 15,154 in 2018<sup>874</sup>).

<sup>871</sup> Directorate of the Hellenic Police no 1604/16/1195968/18-6-2016, “Διαχείριση παράτυπων αλλοδαπών στα Κέντρα Υποδοχής και Ταυτοποίησης, διαδικασίες Ασύλου, υλοποίηση Κοινής Δήλωσης ΕΕ-Τουρκίας της 18ης Μαρτίου 2016 (πραγματοποίηση επανεισδοχών στην Τουρκία)”, available in Greek at: <http://bit.ly/2nglEj6>.

<sup>872</sup> This is also the content of Art. 46(3-c) IPA.

<sup>873</sup> UNHCR, “Recommendations by the Office of the United Nations High Commissioner for Refugees (UNHCR) concerning the execution of judgments by the European Court of Human Rights (ECtHR) in the cases of M.S.S. v. Belgium and Greece (Application No. 30696/09, Grand Chamber judgment of 21 January 2011) and of Rahimi v. Greece (Application No. 8687/08, Chamber judgment of 05 April 2011)”, 15 May 2019, page 4.

<sup>874</sup> Information provided by the Directorate of the Hellenic Police, 8 February 2020 .

### 1.2.2. *De facto* detention in RIC

Newly arrived persons transferred to a RIC are subject to a 3-day “restriction of liberty within the premises of the Reception and Identification Centres” (*περιορισμός της ελευθερίας εντός του κέντρου*), which can be further extended by a maximum of 25 days if reception and identification procedures have not been completed.<sup>875</sup> This restriction of freedom entails “the prohibition to leave the Centre and the obligation to remain in it.”<sup>876</sup> Taking into consideration the fact that according to the law the persons should remain restricted within the premises of the RIC and are not allowed to leave, the measure provided formerly by Article 14 (2) L 4375/2016, and now by Article 39 (4) IPA, is a *de facto* detention measure, even if it is not classified as such under Greek law. No legal remedy is provided in national law to challenge this “restriction of freedom” measure during the initial 3-day period.<sup>877</sup> Furthermore, the initial measure is imposed automatically, as the law does not foresee an obligation to carry out an individual assessment.<sup>878</sup> This measure is also applied to asylum seekers who may remain in the premises of RIC for a total period of 25 days even after lodging an application.<sup>879</sup>

In practice, following criticism by national and international organisations and bodies, as well as due to the limited capacity to maintain and run closed facilities on the islands with high numbers of people,<sup>880</sup> the “restriction of freedom” within the RIC premises is not applied as a *de facto* detention measure in RIC facilities on the islands. There, newly arrived persons are allowed to exit the RIC facility. As noted by UNHCR “[t]he only RIC which continues to operate as a closed facility, is the one in the land Evros region (Fylakio). Persons undergoing reception and identification procedures at the RIC of Fylakio are under restriction of liberty which cannot last more than 25 days. Asylum-seekers are released either directly from the Police after having registered their will to seek asylum or from the RIC, upon the completion of reception and identification procedures and the registration of their asylum claim, unless special grounds apply for their continued detention, as prescribed by law”<sup>881</sup>. As of 31 December 2019, a number of 391 newly arrived persons remained in Fylakio RIC, with a nominal capacity of 240 persons under a *de facto* detention regime.<sup>882</sup>

Moreover, unaccompanied children may remain at the RIC facilities for a period significantly exceeding the maximum period of 25 days under the pretext of “protective custody”, while waiting for a place in a reception facility. According to the official data, the average waiting period for the transfer of UAMs from RICs to accommodation facilities is as follow Kos – 6 months, Leros - 7 months, Lesbos – 6 months, Fylakio – 6 months, Samos – 6 months, Chios – 8 months.<sup>883</sup>

### 1.2.3. *De facto* detention in transit zones

A regime of *de facto* detention also applies for persons entering the Greek territory from the **Athens International Airport** – usually through a transit flight – without a valid entry authorisation. These persons receive an entry ban to the Greek territory and are then arrested and held in order to be returned on the

<sup>875</sup> Article 14 (2) 4375/2016. The IPA in article 39 (4)(a) provides for a 5 day initial restriction of liberty, which can be extended for further 25 days.

<sup>876</sup> *Ibid.*

<sup>877</sup> Article 14(4) L 4375/2016 (article 39(4)(b) IPA).

<sup>878</sup> Article 14(2) L 4375/2016.

<sup>879</sup> Article 14 (7) L 4375/2016. See also The Greens/EFA, *The EU-Turkey statement and the Greek hotspots: A failed European pilot project in refugee policy*, June 2018, available at: <https://bit.ly/2sJM2H4>, 16.

<sup>880</sup> UNHCR, *Explanatory Memorandum to UNHCR’s Submission to the Committee of Ministers of the Council of Europe on developments in the management of asylum and reception in Greece*, May 2017, 10.

<sup>881</sup> UNHCR, “Recommendations by the Office of the United Nations High Commissioner for Refugees (UNHCR) concerning the execution of judgments by the European Court of Human Rights (ECtHR) in the cases of M.S.S. v. Belgium and Greece (Application No. 30696/09, Grand Chamber judgment of 21 January 2011) and of Rahimi v. Greece (Application No. 8687/08, Chamber judgment of 05 April 2011)”, 15 May 2019, page 4.

<sup>882</sup> Information provided by RIS, 6 February 2020.

<sup>883</sup> <http://bit.ly/2ngIEj6>

next available flight. Persons temporarily held while waiting for their departure are not systematically recorded in a register.<sup>884</sup> In case the person expresses the intention to apply for asylum, then the person is detained at the holding facility of the Police Directorate of the Athens Airport, next to the airport building, and after the full registration the application is examined under the [Border Procedure](#). As provided by the law, where no decision is taken within 28 days, the person is allowed to enter the Greek territory for the application to be examined according to the [Regular Procedure](#).<sup>885</sup>

However, despite the fact that national legislation provides that rights and guarantees provided by national legislation *inter alia* on the detention of asylum seekers should also be enjoyed by applicants who submit an application in a transit zone or at an airport,<sup>886</sup> no detention decision is issued for those applicants who submit an application after entering the country from the Athens International Airport without a valid entry authorisation. These persons remain *de facto* detained at the Athens Airport Police Directorate for a period up to 28 days from the full registration of the application.

#### 1.2.4. Detention in the case of alleged push backs

As mentioned in [Access to the Territory](#), throughout 2019, cases of alleged pushbacks at the Greek-Turkish land border have continued to be systematically reported. As it emerges from these allegations, there is a pattern of *de facto* detention of third-country nationals entering the Evros land border before allegedly being pushed back to Turkey. In particular, as reported, newly arrived persons are arbitrarily arrested without being formally registered and then *de facto* detained in police stations close to the borders. The UN Working Group on Arbitrary Detention (UNWGAD) following its visit to Greece in December 2019 stated that: "Pushback practices are not permitted under Greek law and are contrary to the right to seek asylum. The Working Group is therefore of the view that detention for this purpose has no legal basis. The Working Group urges the Government to put an immediate end to pushbacks and to ensure that such practices, including any possible acts of violence or ill-treatment that has occurred during such incidents, are promptly and fully investigated."<sup>887</sup>

In June 2019, GCR submitted a complaint to the Supreme Court Prosecutor concerning pushback incidents, mainly on asylum seekers from Turkey, in the region of Evros, which have been brought to its attention during the months of April – June 2019<sup>888</sup>. Moreover, in June 2019, GCR handled the submission of three criminal complaints of Turkish nationals, who were victims of pushback operations in the Evros region, before the Prosecutors office of Orestiada and Alexandroupoli, the examination of which is pending.

## 2. Alternatives to detention

### Indicators: Alternatives to Detention

1. Which alternatives to detention have been laid down in the law?  
 Reporting duties  
 Surrendering documents  
 Financial guarantee  
 Residence restrictions
2. Are alternatives to detention used in practice?  Yes  No

<sup>884</sup> CPT, *Report to the Greek Government on the visits to Greece carried out by CPT*, CPT/Inf (2017) 25, 26 September 2017, available at: <http://bit.ly/2Fktu5U>, para 59.

<sup>885</sup> Article 60(2) L 4375/2016 and Article 90(2) IPA.

<sup>886</sup> Article 60(1) L 4375/2016 and Article 90(1) IPA.

<sup>887</sup> UN High Commissioner of Human Rights, "Working Group on Arbitrary Detention: Preliminary Findings from its visit to Greece (2 - 13 December 2019)", available at: <https://bit.ly/37BM45Y>

<sup>888</sup> GCR, "Complaint to the Supreme Court prosecutor on push-back incidents in the region of Evros during the months of April-June 2019", available at: <https://bit.ly/322bxV3>.

Article 46(2) L 4375/2016, now Article 46(2) and 46 (3) IPA, requires authorities to examine and apply alternatives to detention before resorting to detention of an asylum seeker. A non-exhaustive list of alternatives to detention provided by national legislation, both for third-country nationals under removal procedures and asylum seekers, is mentioned in Article 22(3) L 3907/2011. Regular reporting to the authorities and an obligation to reside at a specific area are included on this list. The possibility of a financial guarantee as an alternative to detention is also foreseen in the law, provided that a Joint Decision of the Minister of Finance and the Minister of Public Order will be issued with regard to the determination of the amount of such financial guarantee.<sup>889</sup> However, such a Joint Ministerial Decision is still pending since 2011. In any event, alternatives to detention are systematically neither examined nor applied in practice. As noted by UNHCR in May 2019 “there is no consideration of alternative measures to detention”.<sup>890</sup>

The IPA repealed the condition of a prior recommendation on the continuation or termination of detention from the Asylum Service (article 46(4)) requiring solely the notification (‘ενημέρωση’) from the Asylum Service. Under the previous legislation said condition was provided. However, when issuing recommendations on the continuation or termination of detention of an asylum seeker,<sup>891</sup> the Asylum Service tended to use standardised recommendations, stating that detention should be prolonged “if it is judged that alternative measures may not apply”. Thus, the Asylum Service did not proceed to any assessment and it was up to the Police to decide on the implementation of alternatives to detention.

### The geographical restriction on the islands

As regards the “geographical restriction” on the islands, i.e. the obligation to remain on the island of arrival, imposed systematically to newly arrived persons subject to the EU-Turkey statement (see [General](#)), after the initial issuance of a detention order, the legal nature of the measure has to be assessed by taking into account the “concrete situation” of the persons and “a whole range of criteria such as the type, duration, effects and manner of implementation of the measure.”<sup>892</sup> In any event, it should be mentioned that the measure is:

- (a) Not examined and applied before ordering detention;<sup>893</sup>
- (b) Not limited to cases where a detention ground exists;<sup>894</sup>
- (c) Applied indiscriminately, without a proportionality test, for an indefinite period (without a maximum time limit to be provided by law) and without an effective legal remedy to be in place.

As it has been observed, a national practice systematically imposing an alternative to detention “would suggest that the system is arbitrary and not tailored to the individual circumstances” of the persons concerned.<sup>895</sup>

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<sup>889</sup> Article 22(3) L 3907/2011.

<sup>890</sup> UNHCR, “Recommendations by the Office of the United Nations High Commissioner for Refugees (UNHCR) concerning the execution of judgments by the European Court of Human Rights (ECtHR) in the cases of M.S.S. v. Belgium and Greece (Application No. 30696/09, Grand Chamber judgment of 21 January 2011) and of Rahimi v. Greece (Application No. 8687/08, Chamber judgment of 05 April 2011)”, 15 May 2019, page 5.

<sup>891</sup> Article 46(3) L 4375/2016.

<sup>892</sup> See *inter alia* ECtHR, *Guzzardi v. Italy*, Application No 7367/76, Judgment of 6 November 1980, para 92-93.

<sup>893</sup> UN Commission on Human Rights, *Report of the Working Group on Arbitrary Detention. Addendum: report on the visit of the Working Group to the United Kingdom on the issue of immigrants and asylum seekers*, 18 December 1998, E/CN.4/1999/63/Add.3, available at: <http://bit.ly/2kFs5LN>, para 33: “Alternative and non-custodial measures, such as reporting requirements, should always be considered before resorting to detention”.

<sup>894</sup> FRA, *Fundamental rights: challenges and achievements in 2012*, available at: <http://bit.ly/2EHr0k7>, 52.

<sup>895</sup> UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at: <http://bit.ly/2mJk3Uh>, 43.

Non-compliance with the geographical restriction leads to the re-detention of persons arrested outside their assigned island with a view to be transferred back. Persons returned either remain detained or, if released, often face harsh living conditions due to overcrowded reception facilities on the islands.

### 3. Detention of vulnerable applicants

#### Indicators: Detention of Vulnerable Applicants

1. Are unaccompanied asylum-seeking children detained in practice?  
 Frequently  Rarely  Never
- ❖ If frequently or rarely, are they only detained in border/transit zones?  Yes  No
2. Are asylum seeking children in families detained in practice?  
 Frequently  Rarely  Never

National legislation provides a number of guarantees with regard to the detention of vulnerable persons, yet does not prohibit their detention. According to the former Article 46(10) L 4375/2016, now article 48(2) IPA women should be detained separately from men, the privacy of families in detention should be duly respected,<sup>896</sup> and the detention of minors should be a last resort measure and be carried out separately from adults.<sup>897</sup> Moreover, according to the law, “the vulnerability of applicants... shall be taken into account when deciding to detain or to prolong detention.”<sup>898</sup> Article 48 IPA reiterates this provision.

More generally, Greek authorities have the positive obligation to provide special care to applicants belonging to vulnerable groups (see [Special Reception Needs](#)).<sup>899</sup> However, persons belonging to vulnerable groups are detained in practice, without a proper identification of vulnerability and individualised assessment prior to the issuance of a detention order. In 2019, GCR has supported various cases of vulnerable persons in detention whose vulnerability had not been taken into account. These include:

- ❖ A citizen from Pakistan suffering from psychiatric problems, who was hospitalized for a month during detention. He was detained in a police station for a period of two months and later transferred to the PRDC of Amygdaleza. He was released after remaining a total of four months in detention.<sup>900</sup>
- ❖ An asylum seeker of Palestinian origin, torture survivor, who was detained for a month in Agios Panteleimonas Police Station in Athens, waiting to be transferred back to Leros, due to an imposed geographical restriction.
- ❖ A female detainee from the Democratic Republic of Congo, with psychological and cardiological issues, detained in Tavros PRDC for a period of two months. She was released following her asylum registration in detention.

#### 3.1. Detention of unaccompanied children

Unaccompanied or separated children “as a rule should not be detained”, and their detention is permitted “only in very exceptional cases... as a last resort solution, only to ensure that they are safely referred to appropriate accommodation facilities for minors.”<sup>901</sup> Nevertheless, national legislation does not explicitly prohibit detention of unaccompanied children and the latter is applied in practice. As no best interests

<sup>896</sup> Article 46(10)(b) L 4375/2016, as amended by Article 10 L 4540/2018.

<sup>897</sup> Article 48(2) IPA.

<sup>898</sup> Article 46(8) L 4375/2016, as amended by Article 10 L 4540/2018.

<sup>899</sup> Article 60 IPA.

<sup>900</sup> GCR document no. 123/22-03-2019.

<sup>901</sup> Article 46(10A) L 4375/2016, inserted by Article 10 L 4540/201848(2) IPA.

determination procedure is provided by Greek law, no assessment of the best interests of the child takes place before or during detention, in contravention of the Convention on the Rights of the Child.<sup>902</sup>

Due to the lack of accommodation facilities or transit facilities for children, detention of unaccompanied children is systematically imposed. Unaccompanied children “can be detained for a long period in very sub-standard conditions before their referral to an appropriate reception facility”.<sup>903</sup> Specifically, they are detained in police stations and pre-removal facilities or in Reception and Identification Centres, where in a number of cases (in particular in Fylakio RIC) their stay there amounts to *de facto* detention. For example and as of the Fylakio RIC, UNHCR states “that the hosting capacity of the RIC is for approximately 280 persons and often has an average of 100 to 140 UAC staying under ‘protective custody’ beyond the 25 days and up to 3-5 months. During this period, the children are restricted in a facility without adequate medical and psychosocial services and without access to recreational and educational activities. Due to overcrowding, they stay together with families and adults, at risk of exposure to exploitation and abuse.”<sup>904</sup>

Despite the announcement by the Minister for Migration Policy already since 2017 that “not a single child would be kept in protective custody”,<sup>905</sup> the detention of unaccompanied children continues to occur. At the end of 2019, 98 unaccompanied children were held in detention (“protective custody”) in the pre-removal centre of **Amygdaleza**,<sup>906</sup> 97 were detained in police stations and other facilities around Greece, and a number of them were in *de facto* detention in particular in Fylakio RIC.<sup>907</sup> Unaccompanied children are detained either on the basis of the pre-removal or asylum detention provisions, or on the basis of the provisions concerning “protective custody”.<sup>908</sup> The latter is subject to no maximum time limit.

Out of 5,301 unaccompanied children estimated in Greece at the end of the year, as many as 2,222 were on a waiting list for long term or temporary accommodation.<sup>909</sup>

The number of unaccompanied children detained in police facilities under “protective custody” and in Reception and Identification Centres, between March 2019 and December 2019 has evolved as follows:

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<sup>902</sup> L 2101/1992, Gov. Gazette A’ 192/2-12-1992 has ratified the Convention on the Rights of the Child.  
<sup>903</sup> UNHCR, “Submission by the Office of the United Nations High Commissioner for Refugees in the case of International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece (Complaint No. 173/2018) before the European Committee of Social Rights”, page 9, available at: <https://bit.ly/39EHqWq>

<sup>904</sup> Ibid. p. 5

<sup>905</sup> AMNA, ‘Υπ. Μεταναστευτικής Πολιτικής: Ως το τέλος του έτους όλα τα ασυνόδευτα παιδιά σε κατάλληλες δομές’, 2 August 2017, available in Greek at: <http://bit.ly/2wo3hO5>.

<sup>906</sup> Information provided the Directorate of the Hellenic Police, 8 February 2020 2019.

<sup>907</sup> EKKA, *Situation Update: Unaccompanied Children in Greece*, 31 December 2019.

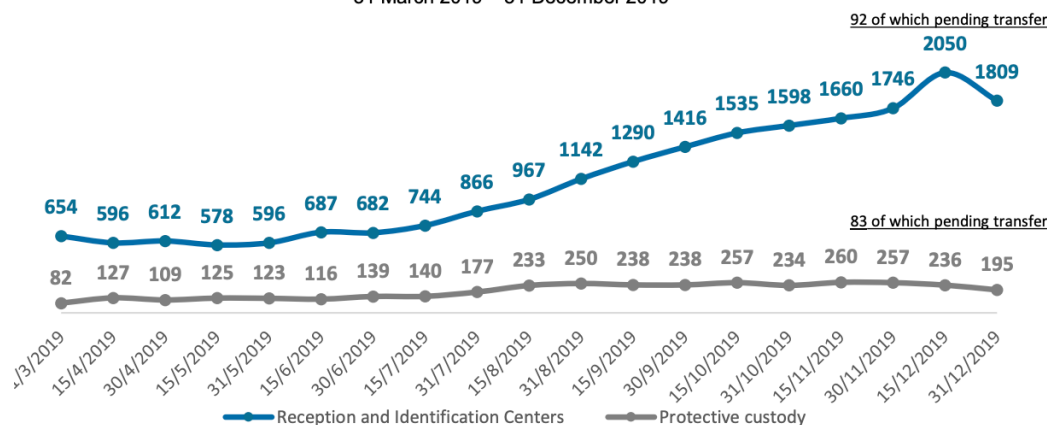
<sup>908</sup> Article 118 PD 141/1991.

<sup>909</sup> EKKA, *Situation update: Unaccompanied children in Greece*, 31 December 2019, available at: <https://bit.ly/2STL3Rw>.



**Number of UAC in Reception and Identification Centers/Protective Custody**

31 March 2019 – 31 December 2019



Source: EKKA, Situation Update: Unaccompanied Children in Greece, 31 December 2019.

In February 2019, the ECtHR found that the automatic placement of unaccompanied asylum-seeking children under protective custody in police facilities, without taking into consideration the best interests of the child, violated Article 5(1) ECHR.<sup>910</sup> Moreover, during 2019, both the European Court of Human Rights and the European Committee of Social Rights has ordered the Greek authorities to immediately halt the detention of unaccompanied children and transfer them in reception facilities and in conditions in line with Art. 3 ECHR. More precisely, the ECtHR has granted interim measures in four cases regarding UAMs detained in police facilities in Greece. These include:

- ❖ The case of 2 unaccompanied girls placed in protective custody in Tavros PRDF (Athens) in March 2019. The ECtHR ordered the Greek Authorities to immediately transfer the girls to an accommodation facility for minors and ensure that their living conditions are in line with Article 3 ECHR.<sup>911</sup>
- ❖ The case of 20 unaccompanied boys detained at Kolonos police station in Athens in October 2019. The ECtHR granted interim measures ordered their transfer to appropriate shelters. Due to the fact that 9 of the minor applicants have been transferred for Kolonos police Station to Amigdaleza PRDF (Minor's section), the Court ordered (one week after the initial decision) in a new Decision, to transfer these applicants to a shelter.<sup>912</sup>
- ❖ The case of a 16-year-old unaccompanied boy (October 2019)<sup>913</sup> and the case of 2 unaccompanied boys (November 2019) detained in police stations in Attica region.<sup>914</sup>

<sup>910</sup> ECtHR, *H.A. and others v. Greece*, Application No 19951/16, Judgment of 28 February 2019, EDAL, available at: <https://bit.ly/2FCoVFP>.

<sup>911</sup> The case has been supported by GCR, see GCR, Το ΕΔΔΑ χορηγεί ασφαλιστικά μέτρα σε κρατούμενα ασυνόδευτα ανήλικα, 26 March 2019, available in Greek at: <https://bit.ly/2FADnOT>.

<sup>912</sup> The case has been supported by Arsis, Το ΕΔΔΑ αποφασίζει με ασφαλιστικά μέτρα την άρση της κράτησης ασυνόδευτων ανηλίκων σε αστυνομικά τμήματα, 10 October 2019, available in Greek at: <https://bit.ly/2SEuHxm>; Arsis, Το ΕΔΔΑ με νέα απόφαση ασφαλιστικών μέτρων υποδεικνύει στην Ελληνική Κυβέρνηση τη μεταφορά σε κατάλληλες δομές φιλοξενίας των ασυνόδευτων ανηλίκων που κρατούνται στην Αμυδαλέζα, 18 October 2019, available in Greek at: <https://bit.ly/2P95BEB>

<sup>913</sup> The case has been supported by Equal Rights beyond Borders, see ERBB, European Court of Human Rights: Minor is to be released immediately from "protective custody", 29 October 2019, available at: <https://bit.ly/2Il3hGF>.

<sup>914</sup> The case has been supported by Refugee Support Aegean, see RSA, European Court of Human Rights asks Greece to transfer two unaccompanied boys detained in police station to suitable shelter, 6 November 2019, available at: <https://bit.ly/2Qkfp4>.

Additionally, in May 2019 the European Committee of Social Rights, following a collective complaint submitted by ECRE and ICJ with the support of GCR, has indicated to the Greek Authorities to adopt immediate measures and inter alia to “ensure the use of alternatives to detention of migrant children, and to ensure in particular that unaccompanied children in police stations, pre-removal centres and Reception and Identification Centres are provided with immediate access to age-appropriate shelters”.<sup>915</sup>

In its preliminary findings from its visit to Greece (2-13 December 2019), the Working Group of Arbitrary Detention “invite[d] the Government to ensure that the best interest of each child is prioritized and that children who enter the country in an irregular manner are not detained and are placed in facilities appropriate to their age. As the Greek Ombudsman has observed, this could be achieved by transitioning to community-based care, foster care, supported independent living, and the gradual reduction of institutional structures.”<sup>916</sup>

### **Detention following wrong age assessment**

Despite the fact that there are currently two Ministerial Decisions outlining age assessment procedures for unaccompanied children (see [Identification](#)), within the scope of the reception and identification procedures,<sup>917</sup> and that of the asylum procedure,<sup>918</sup> no age assessment procedure is provided by the national framework to be applied by the Hellenic Police for minors held in detention. In practice, children under the responsibility of police authorities are as a rule deprived of any age assessment guarantees set out in the relevant Ministerial Decision, and systematically undergo medical examinations consisting of left-hand X-ray, panoramic dental X-ray and dental examination in case their age is disputed.<sup>919</sup> In addition to the limited reliability and highly invasive nature of the method used, it should be noted that no remedy is in place to challenge the outcome of that procedure.

As noted by the UN Working Group on Arbitrary Detention “[a]t present, the police reportedly rely primarily on x-ray and dental examinations under the third step of the age assessment procedure, and these examinations are not sufficient to accurately assess a person's age. Persons claiming to be children are reportedly not generally represented or informed of their rights in a language that they understand during the assessment [...] The guarantees applicable to age assessment do not apply to unaccompanied children who are in protective custody under the responsibility of the Hellenic Police. As a result, unaccompanied minors and other children are being detained unnecessarily due to inaccurate assessment procedures, and are treated as and detained with adults”.<sup>920</sup>

A number of cases of unaccompanied minors detained as adults have been identified by GCR during 2019. These include for example in Kos PRDF the case of a child of Palestinian origin, claiming to be 15 years old, who was deemed by the authorities to be an adult, following dental and hand X-rays; A 17 year old minor from Egypt, carrying a copy of his passport and birth certificate on him, who was detained as an adult, without an age assessment procedure, based solely on the initial age registration of the police on the day of his arrest; Two UAM from Guinea, carrying on them original birth certificates, remaining in detention for a period of 5 months.<sup>921</sup>

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<sup>915</sup> Council of Europe, European Committee of Social Rights, Decision on Admissibility and on Immediate Measures, 23 May 2019, Complaint No. 173/2018, available at: <https://bit.ly/2uXCWvI> .

<sup>916</sup> Working Group on Arbitrary Detention (WGAD), Preliminary Findings from its visit to Greece (2-13 December 2019), available at: <https://bit.ly/2vNJlnk> .

<sup>917</sup> Joint Ministerial Decision 92490/2013 on the Programme for medical examination, psychosocial diagnosis and support and referral of third-country nationals entering without documentation to first reception facilities, Gov. Gazette 2745/B/29-10-2013, available in Greek at: <http://bit.ly/1FI5OVT> .

<sup>918</sup> Joint Ministerial Decision 1982/2016, Verification of minority of applicants for international protection, Gov. Gazette 335/B/16-12-2016, available in Greek at: <http://bit.ly/2kS49Jf> .

<sup>919</sup> Information provided by the Directorate of the Hellenic Police, 8 February 2020.

<sup>920</sup> Working Group on Arbitrary Detention (WGAD), Preliminary Findings from its visit to Greece (2-13 December 2019), available at: <https://bit.ly/2vNJlnk> .

<sup>921</sup> GCR document 427/2019.

In another case supported by GCR, an unaccompanied minor from Pakistan who was initially registered as an unaccompanied minor, has been considered as an adult following X-Rays examinations and transferred in Corinth PRDF where he remained detained with unrelated adults. It was only after the intervention of GCR that the UAM has been referred for macroscopical examinations by a paediatrician and a psychosocial assessment. On the basis of these findings, the applicant has been re-identified as a minor and transferred to a shelter.

### 3.2. Detention of families

Despite the constant case law of the ECtHR with regard to the detention of families in the context of migration control,<sup>922</sup> families with children are in practice detained. In 2019, that was in particular the case for families with children who, due to the lack of reception capacity, were living in occupied buildings and squats and have been arrested during police evacuation operations. Among others, throughout 2019, GCR has supported cases of single-parent families, families with minor children or families where one member remained detained.

## 4. Duration of detention

### Indicators: Duration of Detention

1. What is the maximum detention period set in the law (incl. extensions):	
❖ Asylum detention	3 months
❖ Pre-removal detention	18 months
❖ "Protective custody"	None
2. In practice, how long in average are asylum seekers detained?	3 months

### 4.1. Duration of asylum detention

Until the end of 2019 the maximum period allowed for detention of an asylum seeker applying from detention was 3 months.<sup>923</sup> The IPA has now laid down an initial 50-day duration for asylum detention, which can be further prolonged by 50-days duration decisions up to 18 months, notwithstanding previous periods spent in pre-removal detention.<sup>924</sup>

In practice, the time limit of detention is considered to start running from the moment an asylum application is formally lodged with the competent Regional Asylum Office or Asylum Unit rather than the moment the person is detained. As delays are reported systematically in relation to the registration of asylum applications from detention, i.e. from the time that the detainee expresses the will to apply for asylum up to the registration of the application (see [Registration](#)), the period that asylum seekers spent in detention was *de facto* longer and may exceed the 3-month time limit that the law lays down. As mentioned by UNWGAD the detention of the asylum seekers exceeds "*in practice the maximum three-month period provided by law for asylum seekers due to the delays in registration of asylum applications*".<sup>925</sup>

Beyond setting out maximum time limits, the law has provided further guarantees with regard to the detention period. Thus detention "shall be imposed for the minimum necessary period of time" and "delays in administrative procedures that cannot be attributed to the applicant shall not justify the prolongation of detention."<sup>926</sup> Moreover, as the law provides "the detention of an applicant constitutes a reason for the acceleration of the asylum procedure, taking into account possible shortages in adequate premises and

<sup>922</sup> See for example ECtHR, *Mahmundi and Others v. Greece*, Application No 14902/10, Judgment of 31 July 2012.

<sup>923</sup> Article 46(4) L 4375/2016.

<sup>924</sup> Article 46(5)(b) IPA.

<sup>925</sup> UNWGAD, *ibid*.

<sup>926</sup> Article 46(5)(a) IPA.

the difficulties in ensuring decent living conditions for detainees”. However, GCR has documented cases where the procedure is not carried out with due diligence and detention is prolonged precisely because of the delays of the administration.

Finally, it should be mentioned that time limits governing the detention of asylum seekers differ from those provided for the detention of third-country nationals in view of removal. In relation to pre-removal detention, national legislation transposing the Returns Directive provides a maximum detention period that cannot exceed 6 months,<sup>927</sup> with the possibility of an exceptional extension not exceeding twelve months, in cases of lack of cooperation by the third-country national concerned, or delays in obtaining the necessary documentation from third countries.<sup>928</sup>

## 4.2. Duration of the detention of unaccompanied children

Special rules govern the detention of unaccompanied children. Unaccompanied children are detained either on the basis of the pre-removal or asylum detention provisions. In the latter case, unaccompanied asylum seeking children are detained “for the safe referral to appropriate accommodation facilities” for a period not exceeding 25 days. According to the provision in case of “to exceptional circumstances, such as the significant increase in arrivals of unaccompanied minors, and despite the reasonable efforts by competent authorities, it is not possible to provide for their safe referral to appropriate accommodation facilities”, detention may be prolonged for a further 20 days.<sup>929</sup> Finally unaccompanied children can be detained on the basis of the provisions concerning “protective custody”.<sup>930</sup> The latter is subject to no maximum time limit.

On average, unaccompanied children remained for prolonged periods, exceeding one month or months, in pre-removal facilities and police stations. GCR is aware of cases of UAMs remaining in detention for 3 months or more in 2019 and early 2020.

## C. Detention conditions

### 1. Place of detention

#### Indicators: Place of Detention

1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)?  Yes  No
2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure?  Yes  No

#### 1.1. Pre-removal detention centres

According to the former Article 46(9) L 4375/2016, now Article 47(1) IPA, asylum seekers are detained in detention areas as provided in Article 31 L 3907/2011, which refers to pre-removal detention centres established in accordance with the provisions of the Returns Directive. Therefore asylum seekers are also detained in pre-removal detention centres together with third-country nationals under removal procedures. Despite the fact that pre-removal detention centres have been operating since 2012, they were officially established through Joint Ministerial Decisions in January 2015.<sup>931</sup>

<sup>927</sup> Article 30(5) L 3907/2011.

<sup>928</sup> Article 30(6) L 3907/2011.

<sup>929</sup> Article 48(2) IPA.

<sup>930</sup> Article 118 PD 141/1991.

<sup>931</sup> Joint Ministerial Decision 8038/23/22-iy on the creation and functioning of Pre-removal Centres of Detention of Foreigners, and their regulations, Gov. Gazette 118/B/21-1-2015, available at: <http://bit.ly/2kTWzKX>.

Eight pre-removal detention centres were active at the end of 2019. The total pre-removal detention capacity is 4,683 places. A ninth pre-removal centre has been legally established on **Samos** but was not yet operational as of February 2020. According to information provided to GCR by the Hellenic Police, the capacity of the pre-removal detention facilities is as follows:

Capacity of pre-removal detention centres			
Centre	Region	Establishing act	Capacity
Amygdaleza	Attica	JMD 8038/23/22-ιγ', Gov. Gazette B' 118/21.1.2015; JMD 8038/23/22-να', Gov. Gazette B' 2952/31.12.2015	667
Tavros (Petrou Ralli)	Attica	JMD 8038/23/22-ιγ', Gov. Gazette B' 118/21.1.2015; JMD 8038/23/22-να', Gov. Gazette B' 2952/31.12.2015	340
Corinth	Peloponnese	JMD 8038/23/22-ιγ', Gov. Gazette B' 118/21.1.2015; JMD 8038/23/22-να', Gov. Gazette B' 2952/31.12.2015	1,536
Paranesti, Drama	Thrace	JMD 8038/23/22-ιγ', Gov. Gazette B' 118/21.1.2015; JMD 8038/23/22-να', Gov. Gazette B' 2952/31.12.2015	720
Xanthi	Thrace	JMD 8038/23/22-ιγ', Gov. Gazette B' 118/21.1.2015; JMD 8038/23/22-να', Gov. Gazette B' 2952/31.12.2015	480
Fylakio, Orestiada	Thrace	JMD 8038/23/22-ιγ', Gov. Gazette B' 118/21.1.2015; JMD 8038/23/22-να', Gov. Gazette B' 2952/31.12.2015	230
Lesvos	Eastern Aegean	JMD 8038/23/22-ιγ', Gov. Gazette B' 118/21.1.2015; JMD 8038/23/22-να', Gov. Gazette B' 2952/31.12.2015	210
Kos	Dodecanese	JMD 8038/23/22-ξε, Gov. Gazette B' 332/7.2.2017; JMD 8038/23/22-οε', Gov. Gazette B' 4617/28.12.2017	500
Samos	Eastern Aegean	JMD 3406/2017, Gov. Gazette B' 2190/27.6.2017 (not yet operational)	300
<b>Total</b>			<b>4,983</b>

Source: Directorate of the Hellenic Police.

The functioning of these pre-removal facilities has been prolonged until 31 December 2022 under a Joint Ministerial Decision issued at the end of 2018.<sup>932</sup> According to this Decision, the estimated budget for the functioning of the pre-removal detention centres is €80,799,488.

## 1.2. Closed reception centres

The IPA has introduced a new category of detention facilities for asylum seekers. These are referred to as “Closed Temporary Reception Facilities” (Κλειστές Δομές Προσωρινής Υποδοχής)<sup>933</sup> or “Closed Reception Centres” (Κλειστά Κέντρα Υποδοχής).<sup>934</sup>

On the one hand, the law provides that the Closed Temporary Reception Facilities are managed by the Reception and Identification Service (RIS),<sup>935</sup> the authority responsible for RIC and other facilities. On the other hand, it specifies that the Closed Temporary Reception Facilities are to be developed on the model of pre-removal detention centres, managed by the Police.<sup>936</sup> It should also be noted that Article 47(1) IPA only refers to pre-removal centres as facilities in which asylum detention is implemented. No such facilities have been established as of the end of March 2020.

## 1.3. Police stations

<sup>932</sup> Joint Ministerial Decision 8038/23/22-πζ/, Gov. Gazette B' 5906/31.12.2018.

<sup>933</sup> Article 13(4) L 4375/2016, as amended by Article 116(5) IPA.

<sup>934</sup> Article 39(7)(c) IPA.

<sup>935</sup> Article 8(5) L 4375/2016, as amended by Article 116(5) IPA.

<sup>936</sup> Article 13(4) L 4375/2016, as amended by Article 116(5) IPA.

Apart from the aforementioned pre-removal facilities, the law does not expressly rule out detention of asylum seekers in criminal detention facilities.<sup>937</sup> Despite commitments from the Greek authorities to phase out detention in police stations and other holding facilities, third-country nationals including asylum seekers and unaccompanied children are also detained in police stations and special holding facilities during 2019. As confirmed by the Directorate of the Hellenic Police, there were 1,021 persons in administrative detention at the end of 2019 in facilities other than pre-removal centres, of whom 212 were asylum seekers.<sup>938</sup>

As mentioned in [General](#), a breakdown of persons in detention in the police stations is only available for the Eastern Aegean islands. According to these statistics, as of the end of 2019 there were 65 persons detained in police stations on the islands, of whom 1 in Lesbos, 6 in **Chios**, 9 in **Samos**, 6 in **Leros**, **4 in Kos**, and 39 in **Rhodes**.<sup>939</sup>

As stated in [Grounds for Detention](#), detention is also *de facto* applied at the RIC of **Fylakio**.

## 2. Conditions in detention facilities

### Indicators: Conditions in Detention Facilities

1. Do detainees have access to health care in practice?  Yes  Limited  No  
❖ If yes, is it limited to emergency health care?<sup>940</sup>  Yes  No

The law sets out certain special guarantees on detention conditions for asylum seekers. Notably, the authorities must make efforts to ensure that detainees have necessary medical care, and their right to legal representation should be guaranteed.<sup>941</sup> In any event, according to the law, “difficulties in ensuring decent living conditions... shall be taken into account when deciding to detain or to prolong detention.”<sup>942</sup>

However, as it has been consistently reported by a range of actors, detention conditions for third-country nationals, including asylum seekers, do not meet the basic standards in Greece.

### 2.1. Conditions in pre-removal centres

#### 2.1.1. Physical conditions and activities

According to the law, detained asylum seekers shall have outdoor access.<sup>943</sup> Women and men shall be detained separately,<sup>944</sup> unaccompanied children shall be held separately from adults,<sup>945</sup> and families shall be held together to ensure family unity.<sup>946</sup> Moreover, the possibility to engage in leisure activities shall be granted to children.<sup>947</sup>

<sup>937</sup> Article 46 L. 4375/2016.

<sup>938</sup> Information provided by the Directorate of the Hellenic Police, 8 February 2020.

<sup>939</sup> National Coordination Centre for Border Control, Immigration and Asylum, *National situational picture regarding the Eastern Aegean islands*, 31 December 2019, available at: <https://bit.ly/37zEf0Q>.

<sup>940</sup> Medical doctors, when available, are not daily present in all centres. However, in case of emergency, detainees are transferred to public hospitals.

<sup>941</sup> Article 46(10)(d) and (e), and (10A) L 4375/2016 .

<sup>942</sup> Article 46(8) L4375/2016; now Article 46(2) and 46(3) IPA.

<sup>943</sup> Article 46(10)(b) L 4375/2016, as amended by Article 9 L 4540/2018.

<sup>944</sup> Article 46(10A)(e) L 4375/2016, inserted by Article 10 L 4540/2018.

<sup>945</sup> Article 46(10A)(b) L 4375/2016, inserted by Article 10 L 4540/2018.

<sup>946</sup> Articles 47(5)(a) 46(10A)(d) L 4375/2016, inserted by Article 10 L 4540/2018.

<sup>947</sup> Article 46(10A)(c) L 4375/2016, inserted by Article 10 L 4540/2018.

GCR regularly visits the pre-removal facilities depending on needs and availability of resources. According to GCR findings, as corroborated by national and international bodies, conditions in pre-removal detention facilities vary to a great extent and in many cases fail to meet standards.

Overall detention conditions in pre-removal detention facilities (PRDFs) remain substandard, despite some good practices, which have been adopted in some pre-removal detention facilities (such as allowing detainees to use their mobile phones). Major concerns include a carceral, prison-like design, the lack of sufficient hygiene and non-food items, including clothes and shoes, clean mattresses and clean blankets, the lack of recreational activities, and overcrowding persisting in some facilities. The provision of medical services in PRDFs remains critical, as the available resources remain inadequate with respect to observed needs.<sup>948</sup> The precise observations for each PRDF, included on the previous AIDA report, are still valid.<sup>949</sup>

As noted by UNHCR in May 2019 “conditions and procedural safeguards continue to be problematic ... Some of the main deficiencies of concern to UNHCR include:[...] seriously substandard conditions of detention in the pre-removal centres, in particular in P. Ralli in Athens and Fylakio at Evros”.<sup>950</sup>

In June 2019, the Committee of Ministers of the Council of Europe, within the framework of the supervision of the execution of the M.S.S. and Rahimi group of judgments “invited the authorities to give effect to the recommendations made by the CPT and to improve the conditions in immigration detention facilities, including by providing adequate health-care services”.<sup>951</sup>

In its 2019 Annual Report the Ombudsman identified, during the monitoring visits in pre-removal detention facilities the inadequate provision of health services (with an extreme example being Moria PRDF) and insufficient maintenance of the facilities (with an extreme example being PRDF in Xanthi)”, as an ongoing problem.<sup>952</sup>

### 2.1.2. Health care in detention

The law states that the authorities shall make efforts to guarantee access to health care for detained asylum seekers.<sup>953</sup> Since 2017, the responsibility for the provision of medical services in pre-removal detention centres was transferred to the Ministry of Health, and in particular the Health Unit SA (*Ανώνυμη Εταιρεία Μονάδων Υγείας*, AEMY), a public limited company under the supervision of Ministry of Health.<sup>954</sup>

However, substantial medical staff shortage has been observed in PRDFs already since the previous years and the finding of the CPT in 2018 regarding the provision of health care in pre-removal centres are still valid. As the CPT has mentioned “the available resources are totally inadequate compared to the needs observed. The number of health-care staff in each of the centres is insufficient. In some centres, there is no doctor and even the most basic medical equipment is lacking. There is also a total lack of

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<sup>948</sup> Global Detention Project/Greek Council for Refugees, Joint Submission to the Working Group on Arbitrary Detention in Preparation for its Mission to Greece in December 2019, October 2019, available at: <https://bit.ly/3cqZplk>.

<sup>949</sup> AIDA, Report on Greece, Update on 2018, pp. 166-167.

<sup>950</sup> UNHCR, “Recommendations by the Office of the United Nations High Commissioner for Refugees (UNHCR) concerning the execution of judgments by the European Court of Human Rights (ECtHR) in the cases of M.S.S. v. Belgium and Greece (Application No. 30696/09, Grand Chamber judgment of 21 January 2011) and of Rahimi v. Greece (Application No. 8687/08, Chamber judgment of 05 April 2011)”, 15 May 2019, page 6.

<sup>951</sup> Committee of Ministers (1348 meeting (DH) June 2019 - H46-9), Decisions CM/Del/Dec(2019)1348, H46-9 6 June 2019, CM/Notes/1348/H46-9, available at: <https://bit.ly/2TD8qk5>.

<sup>952</sup> Greek Ombudsman, *Annual Report 2019*, available at: <https://bit.ly/3fZEaZJ>, 144.

<sup>953</sup> Article 46(10)(f) L 4375/2016, as amended by Article 9 L 4540/2018.

<sup>954</sup> Article 47(1) L 4461/2017.

effective routine medical screening of new arrivals, including screening for contagious diseases or vulnerabilities. In short, even the most basic health-care needs of detained persons are not being met.”<sup>955</sup>

Official statistics demonstrate that the situation has worsened in 2019 and that pre-removal centres continue to face even more substantial medical staff shortage. At the end of 2019, there were a mere four doctors in total in the detention centres (1 in **Amygdaleza**, 1 in **Korinthos**, 1 in **Xanthi** and 1 in **Fylakio**). There was no doctor present in **Tavros** and **Paranesti** on the mainland. Moreover on the Eastern Aegean islands PRDFs (**Lesvos** PRDF and **Kos** PRDF), i.e. where persons are detained *inter alia* in order to be subject to readmission within the framework of the EU-Turkey Statement, there is no doctor, no interpreter and no psychiatrist present.<sup>956</sup>

According to the official data, the coverage (in percentage) of the required staff in 2019 was as follows:

Provision of medical/health care	Provision of psychological care	Provision of social support services	Provision of interpretation services
Doctors: 22.22%	Psychiatrists: 12.50%	Social workers: 70 %	Interpreters: 19.23%
Nurses: 57.50%	Psychologists: 80%		
Health visitors: 37.50%			
Administrators: 63.64%			

Source: Information provided by the Directorate of the Hellenic Police, 8 February 2020.

More precisely, at the end of 2019, the number of AEMY staff present on each pre-removal detention centre was as follows:

AEMY staff active in pre-removal centres: 31 December 2019								
Category	Amygdaleza	Tavros	Corinth	Paranesti	Xanthi	Fylakio	Lesvos	Kos
Doctors	1	0	1	0	1	1	0	0
Psychiatrists	0	1	0	0	0	0	0	0
Nurses	1	2	3	4	5	4	0	4
Interpreters	1	1	2	0	1	0	0	0
Psychologists	1	1	2	1	1	1	1	0
Social workers	1	1	2	1	1	0	0	1
Health visitors	1	1	1	0	0	0	0	0
Administrators	1	0	1	1	1	1	1	1

Source: Information provided by the Directorate of the Hellenic Police, 8 February 2020.

## 2.2. Conditions in police stations and other facilities

In 2019, GCR visited more than 25 police stations and special holding facilities where third-country nationals were detained:

- **Attica:** police stations *inter alia* in Athens International Airport, Agios Panteleimonas, Vyronas,

<sup>955</sup> CPT, *Preliminary observations made by the CPT which visited Greece from 10 to 19 April 2018*, CPT/Inf (2018) 20, 1 June 2018, para 21.

<sup>956</sup> Information provided by the Directorate of the Hellenic Police, 8 February 2020.



- Piraeus, Syntagma, Drapetsona, Dionysos, Neo Iraklio, Kaminia, Kypseli;
- **Northern Greece:** police stations *inter alia* in Transfer Directorate (*Μεταγωγών*), Thermi, Agiou Athanasiou, Raidestou;
  - **Eastern Aegean islands:** police stations *inter alia* on Rhodes, Leros, Lesvos, Chios and Samos.

Police stations are by nature “totally unsuitable” for detaining persons for longer than 24 hours.<sup>957</sup> However, they are constantly used for prolonged migration detention. As mentioned above and according to the official data there were 1,021 persons in administrative detention at the end of 2019 in facilities other than pre-removal centres, of whom 212 were asylum seekers.<sup>958</sup> According to GCR findings, detainees in police stations live in substandard conditions as a rule, i.e. no outdoor access, poor sanitary conditions, lack of sufficient natural light, no provision of clothing or sanitary products, insufficient food, no interpretation services and no medical services; the provision of medical services by AEMY concerns only pre-removal detention centres and does not cover persons detained in police stations.

Similarly, CPT, following its visit in Greece in 2018 repeated that the detention facilities in most of the police stations are totally unsuitable for holding persons for periods exceeding 24 hours<sup>959</sup>. Despite this, police stations throughout Greece are still being used for holding irregular migrants for prolonged periods. GCR has supported several cases in 2019 in which migrants remained in detention for several days, even months: A citizen of Pakistan in detention in Piraeus police station for two months; 2 men of Palestinian origin in detention in Aghios Panteleimonas and Kallithea police station for one and a half months; A man of Palestinian origin in detention in Drapetsona police station for a month; A person from Pakistan in detention in Dionysos and Neo Iraklio police stations for a period of one and a half months.

Special mention should be made of the detention facilities of the Aliens Directorate of **Thessaloniki** (*Μεταγωγών*). Although the facility is a former factory warehouse, completely inadequate for detention, it continues to be used systematically for detaining a significant number of persons for prolonged periods.<sup>960</sup>

The ECtHR has consistently held that prolonged detention in police stations *per se* is not in line with guarantees provided under Article 3 ECHR.<sup>961</sup> In June 2018, it found a violation of Article 3 ECHR in *S.Z. v. Greece* concerning a Syrian applicant detained for 52 days in a police station in **Athens**.<sup>962</sup> In February 2019, it found a violation of Article 3 ECHR due to the conditions of “protective custody” of unaccompanied children in different police stations in Northern Greece such as **Axioupoli** and **Polykastro**.<sup>963</sup> In June 2019, the Court found that the conditions of the detention of 3 unaccompanied minors under the pretext of protective custody for 24 days, 35 days and 8 days at **Polikastro** police station, **Igoumentisa** port police station and **Filiatra** police station and Agios Stefanos police station and the cell of the Police Directorate of Athens respectively, were not in line with Art. 3 ECHR.<sup>964</sup>

<sup>957</sup> CPT, *Report on the visit to Greece from 13 to 18 April and 19 to 25 July 2016*, CPT/Inf (2017) 25, 26 September 2017, available at: <https://bit.ly/2g4Y9bU>, 6.

<sup>958</sup> Information provided by the Directorate of the Hellenic Police, 8 February 2020.

<sup>959</sup> CPT, *Report on the visit to Greece*, from 10 to 19 April 2018, CPT/Inf (2019) 4, 19 February 2019, available at: <https://bit.ly/2T0peQb>, para 84

<sup>960</sup> Ombudsman, *Συνηγορος του Πολίτη, Εθνικός Μηχανισμός Πρόληψης των Βασανιστηρίων & της Κακομεταχείρισης - Ετήσια Ειδική Έκθεση ΟΡΠΑΤ 2017*, 46.

<sup>961</sup> ECtHR, *Ahmade v. Greece*, Application No 50520/09, Judgment of 25 September 2012, para 101.

<sup>962</sup> ECtHR, *S.Z. v. Greece*, Application No 66702/13, Judgment of 21 June 2018, para 40.

<sup>963</sup> ECtHR, *H.A. and others v. Greece*, Application No 19951/16, Judgment of 28 February 2019, EDAL, available at: <https://bit.ly/2FCoVFP>.

<sup>964</sup> *Sh.D. and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia* (application no. 14165/16).

### 3. Access to detention facilities

#### Indicators: Access to Detention Facilities

1. Is access to detention centres allowed to
- |                   |   |   |                             |
|-------------------|---|---|-----------------------------|
| ❖ Lawyers:        | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited            | <input type="checkbox"/> No |
| ❖ NGOs:           | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited            | <input type="checkbox"/> No |
| ❖ UNHCR:          | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited            | <input type="checkbox"/> No |
| ❖ Family members: | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |

According to the law, UNHCR and organisations working on its behalf have access to detainees.<sup>965</sup> Family members, lawyers and NGOs also have the right to visit and communicate with detained asylum seekers. Their access may be restricted for objective reasons of safety or public order or the sound management of detention facilities, as long as it is not rendered impossible or unduly difficult.<sup>966</sup>

In practice, NGOs' capacity to access detainees in practice is limited due to human and financial resource constraints. Family members' access is also restricted due to limited visiting hours and the remote location of some detention facilities.

Another major practical barrier to asylum seekers' communication with NGOs is that they do not have access to free telephone calls. Therefore access *inter alia* with NGOs is limited in case they do not have the financial means to buy a telephone card. While some detention centres (**Amygdaleza, Corinth, Xanthi, Paranesti, Kos**) have adopted good practice in allowing people to use their mobile phones, others such as **Tavros** and all police stations prohibit the use of mobile phones.

## D. Procedural safeguards

### 1. Judicial review of the detention order

#### Indicators: Judicial Review of Detention

1. Is there an automatic review of the lawfulness of detention?  Yes  No
2. If yes, at what interval is the detention order reviewed? Not specified

#### 1.1. Automatic judicial review

L 4375/2016 introduced a procedure for automatic judicial review of the decisions ordering or prolonging the detention of an asylum seeker. The procedure is largely based on the procedure already in place for the automatic judicial review of the extension of detention of third-country nationals in view of return under L 3907/2011.<sup>967</sup>

Article 46(5) L 4375/2016 reads as follows:

"The initial detention order and the order for the prolongation of detention shall be transmitted to the President of the Administrative Court of First Instance, or the judge appointed thereby, who is territorially competent for the applicant's place of detention and who decides on the legality of the detention measure and issues immediately his decision, in a brief record... In case this is requested, the applicant or his/her legal representative must mandatorily be heard in court by the judge. This can also be ordered, in all cases, by the judge."

<sup>965</sup> Article 46(10)(c) L 4375/2016, as amended by Article 9 L 4540/2018.

<sup>966</sup> Article 46(10)(d) L 4375/2016, as amended by Article 9 L 4540/2018.

<sup>967</sup> Article 30(3) L 3907/2011.

The IPA also provides for an ex-officio judicial control of the detention decision of asylum seekers.<sup>968</sup>

In addition to concerns expressed in previous years as to the effectiveness of this procedure,<sup>969</sup> statistics on the outcome of *ex officio* judicial scrutiny confirm that the procedure is highly problematic and illustrate the rudimentary and ineffective way in which this judicial review takes place. According to the available data regarding detention orders for asylum seekers examined by the Administrative Court of Athens, there have been just four cases where the *ex officio* review did not approve the detention measure imposed:

<b>Ex officio review of detention by the Administrative Court of Athens: 2019</b>		
	under asylum provisions (Article 46 L 4375/2016)	under pre-removal provisions (Article 30 L 3907/2011)
Detention orders transmitted	599	84
Approval of detention order	593	71
No approval of detention order	3	0
Abstention from decision*	3	13

Source: Administrative Court of Athens, Information provided on 26 February 2020. \* “Abstention from decision” in L 4375/2016 cases concerns detention orders transmitted after the expiry of the time limit. For L 3907/2011 cases, according to its interpretation of the law, the Court examines the lawfulness of detention only if detention is prolonged beyond 6 months. Therefore, if detention is prolonged after an initial 3 months up to 6 months, the Court abstains from issuing a decision.

## 1.2. Objections against detention

Apart from the automatic judicial review procedure, asylum seekers may challenge detention through “objections against detention” before the Administrative Court,<sup>970</sup> which is the only legal remedy provided by national legislation to this end. Objections against detention are not examined by a court composition but solely by the President of the Administrative Court, whose decision is non-appealable.

However, in practice the ability for detained persons to challenge their detention is severely restricted due to “gaps in the provision of interpretation and legal aid, resulting in the lack of access to judicial remedies against the detention decisions”.<sup>971</sup>

Over the years the ECtHR has found that the objections remedy is not accessible in practice.<sup>972</sup> That was also the case in 2019. In February 2019, the Court found a violation of Article 5(4) ECHR, emphasising that the detention orders were only written in Greek and included general and vague references regarding the legal avenues available to the applicants to challenge their detention. Furthermore, the applicants were not in a position to understand the legal aspects of their case and they did not appear to have access to lawyers on the island. In this connection, the Court noted that the Greek government had also not specified which refugee-assisting NGOs were available.<sup>973</sup>

In another judgment issued in October 2019, the Court also found a violation of Art. 5(4) on the basis that the decision, which indicated the possibility of lodging an appeal, was written in Greek; It was not certain that the applicants, who had no legal assistance in either camp, had sufficient legal knowledge to

<sup>968</sup> Article 46(5-b) IPA.

<sup>969</sup> UN Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants, Addendum: Mission to Greece*, 18 April 2013, A/HRC/23/46/Add.4, available at: <http://bit.ly/2kZ7D8R>, para 57.

<sup>970</sup> Article 46(6) L 4375/2016, citing Article 76(3)-(4) L 3386/2005.

<sup>971</sup> UNWGAD, *idem*.

<sup>972</sup> ECtHR, *J.R. and Others v. Greece*, Application No 22696/16, Judgment of 25 January 2018, para 99;

<sup>973</sup> ECtHR, *O.S.A. v. Greece*, Application No 39065/16, Judgment of 21 March 2019.

understand the content of the information brochure distributed by the authorities, and especially the material relating to the various remedies available under domestic law; The Court also noted that the information brochure in question referred in a general way to an “administrative court”, without specifying which one; However, there was no administrative court on the island of Chios, where the applicants were detained, and the nearest one was on the island of Mytilene. Even assuming that the remedies were effective, the Court did not see how the applicants could have exercised them. Having regard also to the findings of other international bodies, the Court considered that, in the circumstances of the case, the remedies in question had not been accessible to the applicants.<sup>974</sup>

Moreover, the ECtHR has found on various occasions the objections procedure to be an ineffective remedy, contrary to Article 5(4) ECHR,<sup>975</sup> as the lawfulness *per se* of the detention, including detention conditions, was not examined in that framework. In order to bring national law in line with ECHR standards, legislation was amended in 2010. However, the ECtHR has found in a number of cases that, despite the amendment of the Greek law, the lawfulness of applicants’ detention had not been examined in a manner equivalent to the standards required by Article 5(4) ECHR,<sup>976</sup> and “the applicant did not have the benefit of an examination of the lawfulness of his detention to an extent sufficient to reflect the possibilities offered by the amended version” of the law.<sup>977</sup> This case law of the ECtHR illustrates that the amendment of national legislation cannot itself guarantee an effective legal remedy in order to challenge immigration detention, including the detention of asylum seekers.

As far as the judicial review of detention conditions is concerned, based on the cases supported by GCR, it seems that courts tend either not to take complaints into consideration or to reject them as unfounded, even against the backdrop of numerous reports on substandard conditions of detention in Greece, brought to their attention. This is even the case of persons who are detained for prolonged periods in police station or totally inadequate police facilities. In a case supported by GCR, the administrative Court of Piraeus rejected the allegations with regards the detention conditions as “vague and inadmissible” of a person detained in a police station (Kaminia-Neo Faliro police station) for more than 3 months.<sup>978</sup>

Moreover, based on the cases supported by GCR, it also seems that the objections procedure may also be marred by a lack of legal security and predictability, which is aggravated by the fact that no appeal stage is provided in order to harmonise and/or correct the decisions of the Administrative Courts. GCR has supported a number of cases where the relevant Administrative Courts’ decisions were contradictory, even though the facts were substantially the same.

Finally, as regards “protective custody” of unaccompanied children (see Detention of Vulnerable Applicants), the ECtHR found in February 2019 that the objections procedure was inaccessible since the applicants were not officially classified as detainees, and since they would not be able to seize the Administrative Court without a legal representative.<sup>979</sup>

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<sup>974</sup> ECHR, *Kaak v. Greece*, Application No 34215/16, Judgment of 3 October 2019.

<sup>975</sup> See e.g. ECtHR, *Rahimi v. Greece* Application No 8687/08, Judgment of 5 April 2011; *R.U. v. Greece* Application No 2237/08, Judgment of 7 June 2011; *C.D. v. Greece*, Application No 33468/10, Judgment of 19 March 2014.

<sup>976</sup> ECtHR, *R.T. v. Greece*, Application no 5124/11, Judgment of 11 February 2016; *Mahammad and others v. Greece*, Application No 48352/12, January 15 January 2015; *MD v. Greece*, Application No 60622/11, Judgment of 13 November 2014; *Housein v. Greece*, Application No 71825/11, Judgment of 24 October 2013. In the case *F.H. v. Greece*, Application No 78456/11, Judgment of 31 July 2014, the Court found a violation of Article 3 combined with Article 13, due to lack of an effective remedy in the Greek context in order to control detention conditions.

<sup>977</sup> ECtHR, *S.Z. v. Greece*, Application No 66702/13, Judgment of 21 June 2018, para 72.

<sup>978</sup> Administrative Court of Piraeus. Decision No 56/2019.

<sup>979</sup> ECtHR, *H.A. v. Greece*, Application No 19951/16, Judgment of 28 February 2019, para 212.

## 2. Legal assistance for review of detention

### Indicators: Legal Assistance for Review of Detention

1. Does the law provide for access to free legal assistance for the review of detention?  
 Yes  No
2. Do asylum seekers have effective access to free legal assistance in practice?  
 Yes  No

Former Article 46(7) L 4375/2016, now Article 46(7) IPA provides that “detainees who are applicants for international protection shall be entitled to free legal assistance and representation to challenge the detention order...”

In practice, no free legal aid system has been set up to challenge his or her detention. Free legal assistance for detained asylum seekers provided by NGOs cannot sufficiently address the needs and in any event cannot exempt the Greek authorities from their obligation to provide free legal assistance and representation to asylum seekers in detention, as foreseen by the recast Reception Conditions Directive.<sup>980</sup> This continued to be the case in 2019, where only two to three NGOs were providing free legal assistance to detainees with limited resources and less than 10 lawyers in total focusing on detention countrywide.

CPT findings from 2018 confirm that “the information provided was insufficient – particularly concerning their (legal) situation... there was an almost total lack of available interpretation services in all the establishments visited... access to a lawyer often remained theoretical and illusory for those who did not have the financial means to pay for the services of a lawyer... As a result, detainees’ ability to raise objections against their detention or deportation decisions or to lodge an appeal against their deportation was conditional on them being able to access a lawyer.”<sup>981</sup> This situation remained unchanged during 2019.

As mentioned above in two 2019 ECtHR judgments, the Court by taking into consideration inter alia the lack of legal aid to challenge the detention order found a violation of Art 5(4).<sup>982</sup>

## E. Differential treatment of specific nationalities in detention

As mentioned in the General section, a so-called “pilot project” / “low rate scheme” is implemented on Lesbos, Kos and partly Leros, under which newly arrived persons belonging to particular nationalities with low recognition rates, are immediately placed in detention upon arrival and remain there for the entire asylum procedure.

<sup>980</sup> Article 9(6) recast Reception Conditions Directive.

<sup>981</sup> CPT, *Report on the visit to Greece from 10 to 19 April 2018*, CPT/Inf (2019) 4, 19 February 2019, paras 78-80.

<sup>982</sup> ECtHR, *O.S.A. v. Greece*, Application No 39065/16, Judgment of 21 March 2019; ECtHR, *Kaak v. Greece*, Application No 34215/16, Judgment of 3 October 2019.

## Content of International Protection

### A. Status and residence

#### 1. Residence permit

##### Indicators: Residence Permit

- |  |  |
|--|--|
| 1. What is the duration of residence permits granted to beneficiaries of protection? |  |
| ❖ Refugee status   | 3 years                                  |
| ❖ Subsidiary protection  | 1 year renewable for a period of 2 years |
| ❖ Humanitarian protection  | 1 year renewable for a period of 2 years |

Until the end of December 2019, individuals recognised as refugees or beneficiaries of international protection were granted a 3-year residence permit, which could be renewed, after a decision of the Head of the Regional Asylum Office.<sup>983</sup> However, following the entry into force of the new IPA on 1 January 2020, beneficiaries of subsidiary protection will no longer have the right to receive a 3-year permit. They will obtain a 1-year residence permit, renewable for a period of 2 years.<sup>984</sup>

Residence permits are usually delivered at least 4-5 months after the communication of the positive decision and the submission of the special ID decision (Απόφαση ΑΔΕΤ) and photos to the Aliens Police Directorate (Διεύθυνση Αλλοδαπών). It's up to the beneficiaries of international protection to submit this documentation to the Aliens Police Directorate as soon as possible for the procedure to start. Until the issuance of the residence permits, applicants hold the asylum seeker card, stamped with the mention "Pending Residence Permit".<sup>985</sup>

An application for renewal should be submitted no later than 30 calendar days before the expiry of the residence permit. The mere delay in the application for renewal, without any justification, cannot lead to the rejection of the application.<sup>986</sup> However, following the entry into force of the IPA, this is valid only for recognized refugees, as the new law abolished the said guarantee for beneficiaries of subsidiary protection.<sup>987</sup>

Since 2017, the application for renewal is submitted via email to the Asylum Service.<sup>988</sup> The renewal decision is notified to the applicant only via email. Accordingly, bearing in mind that legal aid is not provided at this stage, technologically illiterate beneficiaries of international protection can face obstacles while applying for the renewal of their permit.

The renewal procedure lasts approximately 1,5 months on average.<sup>989</sup> However, as far as GCR is aware, longer waiting periods are observed in a number of cases, which can reach 6 months in practice due to high number of applicants. During this procedure the Legal Unit of the Asylum Service processes criminal record checks on the beneficiaries of international protection, which may lead to the **Withdrawal** of their protection status. Pending the issuance of a new residence permit, beneficiaries of international protection are granted a certificate of application (*βεβαίωση κατάστασης αιτήματος*) which is valid for four months. In practice, beneficiaries whose residence permit has expired and who hold this document while awaiting

<sup>983</sup> Article 24 PD 141/2013.

<sup>984</sup> Article 24 (1) L. 4636/2019 (IPA).

<sup>985</sup> Asylum Service, *Frequently asked questions on the rights of asylum seekers and beneficiaries of international protection*, 18 February 2015, available in Greek at: <http://bit.ly/2jGtlw0>.

<sup>986</sup> Article 24(1) 24 PD 141/2013.

<sup>987</sup> Article 24(1) L. 4636/2019(IPA).

<sup>988</sup> Asylum Service, *Residence permit – Renewal*, available at: <http://bit.ly/2xIzUXb>.

<sup>989</sup> Information provided by the Asylum Service, 17 February 2020.

the renewal of their residence permit have faced obstacles in accessing services such as social welfare. As far as GCR is concerned, public services such as the Manpower Employment Organization (OAED), are reluctant to accept this certificate of application (*βεβαίωση κατάστασης αιτήματος*), because the document lacks a photo or a watermark and any relevant legal provisions allowing the document to be accepted.

In 2019, the Asylum Service received 1,171 applications for renewal (980 from recognized refugees, 134 from beneficiaries of subsidiary protection and 57 from family members of beneficiaries of international protection). The Service issued 983 positive renewal decisions.<sup>990</sup>

For those granted international protection under the “old procedure” prescribed by PD 114/2010, the renewal procedure is conducted by the Aliens Police Directorate (*Διεύθυνση Αλλοδαπών*). Within the framework of this procedure, the drafting of a legal document for the renewal application is required. The decision used to be issued after a period of approximately 3-6 months.<sup>991</sup> In practice, since January 2019 very few decisions have been issued. At first the delay was due to the resignation of the Secretary General of the Ministry of Citizen Protection. Then the delay was caused by the multiple election procedures and the final reason was the size of the administrative files of beneficiaries. Due to these delays, a large number of beneficiaries of international protection, for over a year, have no access to the labour market, social security, social welfare and sometimes healthcare, thus facing destitution and homelessness. In January 2020, GCR and other organizations sent a letter of complaint to the Secretary General of the Ministry of Citizen Protection, but the issue has yet to be resolved. Information with regards the number of applications for renewal submitted before the Aliens Police Directorate and their outcome are not available for 2019.

## 2. Civil registration

According to Article 20(1) L 344/1976, the birth of a child must be declared within 10 days to the Registry Office of the municipality where the child was born.<sup>992</sup> The required documents for this declaration are: a doctor’s or midwife’s verification of the birth; and the residence permit of at least one of the parents. A deferred statement is accepted by the registrar but the parent must pay a fee of up to €100 in such a case.<sup>993</sup>

As for the birth registration, beneficiaries of international protection have reported to GCR that if they do not have and cannot obtain a certified marriage certificate from their country of origin, the child is declared without a father’s name. In practice, another difficulty is the fact that according to Greek Legislation the father’s first name cannot be used as the child’s surname. This is a very common mistake that a lot of mothers do and interferes with the procedure of name-giving (*ονοματοδοσία*) of the child, especially when the child’s father is not residing in Greece. In these cases it is hard to prove that the person that signed the authorization to the mother for the name-giving is the declared father of the child in the birth certificate.

A marriage must be declared within 40 days at the Registry Office of the municipality where it took place; otherwise the spouses must pay a fee of up to €100.<sup>994</sup> In order to get legally married in Greece, the parties must provide a birth certificate and a certificate of celibacy from their countries of origin.<sup>995</sup> For recognised **refugees**, due to the disruption of ties with their country of origin, the Ministry of Interior has issued general orders to the municipalities to substitute the abovementioned documents with an affidavit of the interested party.<sup>996</sup> However, asylum seekers and beneficiaries of **subsidiary protection** are still

<sup>990</sup> Information provided by the Asylum Service, 17 February 2020.

<sup>991</sup> Generation 2.0, ‘Καθυστερήσεις στις Άδειες Διαμονής | Δελτίο Τύπου’, 3 January 2018, available in Greek at: <http://bit.ly/2I96pEc>.

<sup>992</sup> L 344/1976 on Civil Registration Acts, Official Gazette 143/A/11.6.1976.

<sup>993</sup> Article 49 L 344/1976.

<sup>994</sup> Article 29 L 344/1976.

<sup>995</sup> Article 1(3) PD 391/1982.

<sup>996</sup> See e.g. Ministry of Interior, General Orders to municipalities 4127/13.7.81, 4953/6.10.81 and 137/15.11.82.

required to present such documentation which is extremely difficult to obtain, and face obstacles which undermine the effective enjoyment of the right to marriage and the right to family life.

Civil registration affects the enjoyment of certain rights of beneficiaries of international protection. For instance, a birth certificate or a marriage certificate are required to prove family ties in order to be recognised as a family member of a beneficiary of international protection and to be granted a similar residence permit according to Article 24 PD 141/2013 (see [Status and Rights of Family Members](#)).

In practice, the main difficulties faced by beneficiaries with regard to civil registration are the language barrier and the absence of interpreters at the Registration Offices of the municipalities. This lack leads to errors in birth or marriage certificates, which are difficult to correct and require a court order.

### 3. Long-term residence

#### Indicators: Long-Term Residence

1. Number of long-term residence permits issued to beneficiaries in 2019: Not available

According to Article 89 of the Immigration Code, third-country nationals are eligible for long-term residence if they have resided in Greece lawfully for 5 consecutive years before the application is filed. For beneficiaries of international protection, the calculation of the 5-year residence period includes half of the period between the lodging of the asylum application and the grant of protection, or the full period if the asylum procedure exceeded 18 months.<sup>997</sup> Absence periods are not taken into account for the determination of the 5-year period, provided that they do not exceed 6 consecutive months and 10 months in total, within the 5-year period.<sup>998</sup> A fee of €150 is also required.<sup>999</sup>

To be granted long-term resident status, beneficiaries of international protection must also fulfil the following conditions:<sup>1000</sup>

- (a) Sufficient income to cover their needs and the needs of their family and is earned without recourse to the country's social assistance system. This income cannot be lower than the annual income of an employee on minimum wage, pursuant to national laws, increased by 10% for all the sponsored family members, also taking into account any amounts from regular unemployment benefits. The contributions of family members are also taken into account for the calculation of the income;
- (b) Full health insurance, providing all the benefits provided for the equivalent category of insured nationals, which also covers their family members;
- (c) Fulfilment of the conditions indicating integration into Greek society, *inter alia* "good knowledge of the Greek language, knowledge of elements of Greek history and Greek civilisation".<sup>1001</sup>

The Council of Europe's Commissioner of Human Rights noted that, as far as it provides foreign citizens with five years or more of legal residence with the possibility to secure a long-term residence permit, Greek law complies with relevant recommendations. However, the Commissioner recommended that the entire asylum procedure period be taken into account, as opposed to half of the period between the lodging of the asylum application and the granting of protection as provided in legislation. In addition, the Commissioner highlighted "that access to long-term residence is complicated by additional requirements, including sufficient income to cover the applicants' needs and those of their family, full health insurance covering all family members, and good knowledge of the Greek language, knowledge of elements of

<sup>997</sup> Article 89(2) L 4251/2014 (Immigration Code).

<sup>998</sup> Article 89(3) Immigration Code.

<sup>999</sup> Article 132(2) Immigration Code, as amended by Article 38 L 4546/2018.

<sup>1000</sup> Article 89(1) Immigration Code.

<sup>1001</sup> Article 90(2)(a) Immigration Code.



Greek history and Greek civilisation”. Moreover, contrary to the Commissioner’s recommendations, Greek law does not provide clear legal exemptions to enable a variety of vulnerable groups to meet the requirements”.<sup>1002</sup> These findings are also valid in 2019.

#### 4. Naturalisation

##### Indicators: Naturalisation

1. What is the waiting period for obtaining citizenship?	
❖ Refugee status	7 years
❖ Subsidiary protection	7 years
2. Number of citizenship grants in 2019:	Not available

##### 4.1. Conditions for citizenship

The Citizenship Code has been amended in March 2020. Prior to the amendment, refugees could apply for citizenship under the conditions that *inter alia* they reside lawfully in Greece for a period of 3 years. The amended legislation has increased this period to 7 years,<sup>1003</sup> similarly to the time period required for foreigners residing in Greece on other grounds (migration law) despite the legal obligation under article 34 of the Geneva Convention 1951 to “facilitate the assimilation and naturalization of refugees” and “in particular make every effort to expedite naturalization proceedings”.

More precisely, according to the Citizenship Code,<sup>1004</sup> citizenship may be granted to a foreigner who:

- (a) Has reached the age of majority by the time of the submission of the declaration of naturalisation;
- (b) Has not been irrevocably convicted of a number of crimes committed intentionally in the last 10 years, with a sentence of at least one year or at least 6 months regardless of the time of the issuance of the conviction decision. Conviction for illegal entry in the country does not obstruct the naturalisation procedure.
- (c) Has no pending deportation procedure or any other issues with regards to his or her status of residence;
- (d) Has lawfully resided in Greece for 7 continuous years before the submission of the application. (As mentioned above, in March 2020, the possibility of recognised refugees to apply for citizenship under the conditions of a 3 years lawful residence in the country has been abolished);
- (e) Hold one of the categories of residence permits foreseen in the Citizenship Code, *inter alia* long-term residence permit, residence permit granted to recognised refugees or subsidiary protection beneficiaries, or second-generation residence permit. More categories of permits were added in 2018.<sup>1005</sup>

Applicants should also have: (1) sufficient knowledge of the Greek language; (2) be normally integrated in the economic and social life of the country; and (3) be able to actively participate in political life (i.e. be familiar with the political institutions of the Hellenic Republic, knowledge of Greek political history).<sup>1006</sup> A

<sup>1002</sup> Council of Europe Commissioner for Human Rights, *Report of the Commissioner for Human Rights of the Council of Europe Dunja Mijatović following her visit to Greece from 25 to 29 June 2018*, CommDH(2018)24, 6 November 2018, paras 72-73.

<sup>1003</sup> Article 36, L. 4674/2020

<sup>1004</sup> Article 5 L 3284/2004 (Citizenship Code).

<sup>1005</sup> Article 5(1)(e) Citizenship Code, as amended by Ministerial Decision 130181/6353/2018, Gov. Gazette B/3142/02.04.2018.

<sup>1006</sup> Article 5A Citizenship Code.

book with information on Greek history, civilisation, geography etc. is issued by the Ministry of Interior and dedicated to foreigners willing to apply for naturalisation.<sup>1007</sup> Simplified instructions on the acquisition of Greek citizenship have also been released by the Ministry of Interior.<sup>1008</sup>

While a refugee can apply for the acquisition of citizenship 3 years after recognition, its acquisition requires a demanding examination procedure in practice. Wide disparities have been observed between Naturalisation Committees as to the depth and level of difficulty of examinations. Against that backdrop, the Ministry of Interior issued a Circular on 12 December 2017 to harmonise naturalisation examinations.<sup>1009</sup>

Law 4604/2019 brought several changes to the Citizenship Code. The examination procedure will no longer be oral. Candidates will have to prove their familiarity with Greek history and culture through a written test.<sup>1010</sup> They must answer correctly 20 out of 30 written questions from a pool of 300 questions.<sup>1011</sup>, which have not yet been published. The sufficient knowledge of the Greek language will also be tested through a language test.<sup>1012</sup>

## 4.2. Naturalisation procedure

A fee of €100 is required for the submission of the application for **refugees**. In the case of beneficiaries of **subsidiary protection**, the fee has been reduced in 2019 from €700 to €550.<sup>1013</sup> A €200 fee is required for the re-examination of the case.

The naturalisation procedure requires a statement to be submitted before the Municipal Authority of the place of permanent residence, and an application for naturalisation to the authorities of the Prefecture.<sup>1014</sup> The statement for naturalisation is submitted to the Mayor of the city of permanent residence, in the presence of two Greek citizens acting as witnesses. After having collected all the required documents, the applicant must submit an application before the Decentralised Administration competent Prefecture.

Where the requisite formal conditions of Article 5 of the Citizenship Code, such as age or minimum prior residence, are not met, the Secretary-General of the Decentralised Administration issues a negative decision. An appeal can be lodged before the Minister of Interior, within 30 days of the notification of the rejection decision.

In case the required conditions are met, the Regional Citizenship Directorate seeks, on its own motion, a certificate of criminal record for judicial use and a certificate of non-deportation, and addresses, through the police authority of the applicant's place of residence, a question to the competent security services of the Ministry of Citizen Protection if there are public or national security reasons to reject the application. The security services are required to respond within 4 months. Failure to send an opinion in a timely manner does not prevent the issuance of the Minister's decision. If this deadline is missed, the naturalisation application will be forwarded to the Naturalisation Committee and will be processed without this opinion.

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<sup>1007</sup> Ministry of Interior, Directorate of Citizenship, *Greece as a Second Homeland: Book of information on Greek history, geography and civilisation*, available in Greek at: <https://bit.ly/2UUf4A0>.

<sup>1008</sup> Ministry of Interior, *Simplified instructions on the acquisition of Greek citizenship*, available at: <https://bit.ly/2TCz35h>.

<sup>1009</sup> Ministry of Interior, Circular No 3 of 12 December 2017 on "instructions relating to the conduct of interviews", 27/2017, available in Greek at: <http://bit.ly/2FhKHJl>.

<sup>1010</sup> Article 32 Law 4604/2019.

<sup>1011</sup> Ministry of Interior, Circular No 38788/2018, 26 July 2018, available in Greek at: <https://bit.ly/2utnJye>.

<sup>1012</sup> Article 32 Law 4604/2019

<sup>1013</sup> Article 33 L. 4604/2019.

<sup>1014</sup> Article 6 Citizenship Code.

The applicant is invited for an examination before the Naturalisation Committee. He/she must undergo a written test under the new procedure.<sup>1015</sup> However, the Ministerial Decision which is necessary for the establishment of the new procedure has not yet been issued<sup>1016</sup>. Hence, the old procedure is still taking place and the applicants are invited for an interview.

In case of a positive recommendation by the Naturalisation Committee, the Minister of Interior will issue a decision granting the applicant Greek citizenship, which will be also published in the Government Gazette. With the aim of simplifying and accelerating the procedure, a Ministerial Decision<sup>1017</sup> was issued in May 2019. It provides that the naturalisation decision will be issued by the Regional Citizenship Directorates and the files will no longer be sent to the Central Citizenship Directorate of the Ministry of Interior. This should reduce the waiting period for the issuance of a positive naturalisation decision by 9-12 months.<sup>1018</sup>

Greek citizenship is acquired following the oath of the person, within a year from the publication of the decision. Persons with disabilities can take the oath in their house or via teleconference.<sup>1019</sup> If the oath is not given while this period, the decision is revoked.

In case of a negative recommendation of the Naturalisation Committee, an appeal can be lodged within 15 days. A decision of the Minister of Interior will be issued, in case that the appeal is accepted. In case of rejection of the appeal, an application for annulment (*αίτηση ακύρωσης*) can be lodged before the Administrative Court of Appeals within 60 days of the notification of that decision.

The procedure remains extremely slow. As noted by the Council of Europe's Commissioner for Human Rights: "The naturalisation procedure is reportedly very lengthy, lasting in average 1,494 days due to a considerable backlog pending since 2010".<sup>1020</sup> In January 2020, delays in the naturalization procedure have been raised in the Parliament, by a parliamentary question.<sup>1021</sup>

As of 30 June 2019, a total of 2,530 foreigners were granted citizenship by way of naturalisation,<sup>1022</sup> compared to 2,528 foreigners in 2018 and 3,483 in 2017. This number is not limited to beneficiaries of international protection. Bearing in mind the main nationalities of beneficiaries of international protection in Greece, it appears therefore that the number of beneficiaries of international protection acquiring citizenship in 2019 is quite low.<sup>1023</sup>

Apart from naturalisation of foreign nationals (*αλλογενείς*), in 2019, Greece also granted citizenship to 2,747 non-nationals of Greek origin (*ομογενείς*), 21,559 second-generation children i.e. foreign children born in Greece or successfully completing school in Greece, and 501 unmarried minor children of parents recently acquiring Greek citizenship.<sup>1024</sup>

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<sup>1015</sup> Article 7 Citizenship Code, as amended by L. 4604/2019.

<sup>1016</sup> Generation 2.0, What about citizenship?, 8 October 2019, available at: <https://bit.ly/2vmtBgK>.

<sup>1017</sup> Ministerial Decision 34226/06.05.2019, published in the Government Gazette B'1603/10.05.2019.

<sup>1018</sup> Ministry of Interiors, First Conclusions with regards the transfer of the competence to sign a naturalization decision from the Minister of Interiors to the Prefectural Directorates of Naturalization, 27 June 2019, available in Greek at: <https://bit.ly/2vSb2RN>.

<sup>1019</sup> Article 9(5) Citizenship Code.

<sup>1020</sup> Council of Europe Commissioner for Human Rights, Report of the Commissioner for Human Rights of the Council of Europe Dunja Mijatović following her visit to Greece from 25 to 29 June 2018, CommDH(2018)24, 6 November 2018, available at: <https://bit.ly/2Opvm05>, para 74

<sup>1021</sup> Parliamentary Question, Delays in the naturalization procedure for adults and second generation kids, 7 January 2020, available in Greek at: <https://bit.ly/2wGB6Q9> (in Greek).

<sup>1022</sup> Ministry of Interior, *Naturalisation statistics 2018 updated 30.6.2019*, available in Greek at: <https://bit.ly/38TMLZU>.

<sup>1023</sup> Ibid.

<sup>1024</sup> Ibid.

## 5. Cessation and review of protection status

### Indicators: Cessation

1. Is a personal interview of the beneficiary in most cases conducted in practice in the cessation procedure?  Yes  No
2. Does the law provide for an appeal against the first instance decision in the cessation procedure?  Yes  No
3. Do beneficiaries have access to free legal assistance at first instance in practice?  
 Yes  With difficulty  No

Cessation of international protection is governed by Articles 11 and 16 PD 141/2013. As of 1 January 2020, the same articles in the IPA apply.

**Refugee status** ceases where the person:<sup>1025</sup>

- (a) Voluntarily re-avails him or herself of the protection of the country of origin;
- (b) Voluntarily re-acquires the nationality he or she has previously lost;
- (c) Has obtained a new nationality and benefits from that country's protection;
- (d) Has voluntarily re-established him or herself in the country he or she fled or outside which he or she has resided for fear of persecution;
- (e) May no longer deny the protection of the country of origin or habitual residence where the conditions leading to his or her recognition as a refugee have ceased to exist. The change of circumstances must be substantial and durable,<sup>1026</sup> and cessation is without prejudice to compelling reasons arising from past persecution for denying the protection of that country.<sup>1027</sup>

Cessation on the basis of changed circumstances also applies to **subsidiary protection** beneficiaries under the same conditions.<sup>1028</sup>

Where cessation proceedings are initiated, the beneficiary is informed at least 15 days before the review of the criteria for international protection and may submit his or her views on why protection should not be withdrawn.<sup>1029</sup>

Where the person appeals the decision, contrary to the [Asylum Procedure](#), the Appeals Committee is required to hold an oral hearing of the beneficiary in cessation cases.<sup>1030</sup> This is also provided for in the new IPA.<sup>1031</sup>

<sup>1025</sup> Article 11(1) PD 141/2013.

<sup>1026</sup> Article 11(2) PD 141/2013.

<sup>1027</sup> Article 11(3) PD 141/2013.

<sup>1028</sup> Article 16 PD 141/2013.

<sup>1029</sup> Article 63(2) L 4375/2016 and Article 91 L. 4636/2019.

<sup>1030</sup> Article 62(1)(a) L 4375/2016, as amended by L 4399/2016.

<sup>1031</sup> Article 97(3) L. 4636/2019 (IPA).

## 6. Withdrawal of protection status

### Indicators: Withdrawal

1. Is a personal interview of the beneficiary in most cases conducted in practice in the withdrawal procedure?  Yes  No
2. Does the law provide for an appeal against the withdrawal decision?  Yes  No
3. Do beneficiaries have access to free legal assistance at first instance in practice?  
 Yes  With difficulty  No

Withdrawal of **refugee status** is provided under Article 14 PD 141/2013 and as of 1 January 2020, by the same Article the IPA, where the person:

- (a) Should have been excluded from refugee status;
- (b) The use of false or withheld information, including the use of false documents, was decisive in the grant of refugee status;
- (c) Is reasonably considered to represent a threat to national security; or
- (d) Constitutes a threat to society following a final conviction for a particularly serious crime.

The Asylum Service issued a Circular on 26 January 2018, detailing the application of the ground relating to threat to society following a final conviction for a particularly serious crime.<sup>1032</sup>

Under Article 19 PD 141/2013 and the IPA, **subsidiary protection** may be withdrawn where it is established that the person should have been excluded or has provided false information, or omitted information, decisive to the grant of protection.

The procedure described in **Cessation** is applicable to withdrawal cases.

## B. Family reunification

### 1. Criteria and conditions

#### Indicators: Family Reunification

1. Is there a waiting period before a beneficiary can apply for family reunification?  Yes  No
  - ❖ If yes, what is the waiting period?
2. Does the law set a maximum time limit for submitting a family reunification application?  
For preferential treatment regarding material conditions  Yes  No
  - ❖ If yes, what is the time limit? No time limit - After the period of 3 months the Law further requires the possession of social security and a sufficient income to be proven
3. Does the law set a minimum income requirement?  Yes  No  
After the period of 3 months

<sup>1032</sup> Asylum Service, Circular 1/2018 of 26 January 2018, available in Greek at: <http://bit.ly/2rPEkhh>.

According to PD 131/2006 transposing the Family Reunification Directive, as supplemented by PD 167/2008 and amended by PD 113/2013, only recognised **refugees** have the right to apply for reunification with family members who are third-country nationals, if they are in their home country or in another country outside the EU.

As per Article 13 PD 131/2006, “family members” include:

- (a) Spouses;
- (b) Unmarried minor children;
- (c) Unmarried adult children with serious health problems which render them incapable to support themselves;
- (d) Parents, where the beneficiary solemnly declares that he or she has been living with them and taking care of them before leaving his or her country of origin, and that they no longer have other family members to care for and support them;
- (e) Unmarried partners with whom the applicant has a stable relationship, which is proven mainly by the existence of a child or previous cohabitation, or any other appropriate means of proof.

If the refugee is an unaccompanied minor, he or she has the right to be reunited with his or her parents if he or she does not have any other adult relatives in Greece.

If a recognised refugee requests reunification with his or her spouse and/or dependent children, within 3 months from the deliverance of the decision granting him or her refugee status, the documents required with the application are:<sup>1033</sup>

- (a) A recent family status certificate, birth certificate or other document officially translated into Greek and certified by a competent Greek authority, proving the family bond and/or the age of family members; and
- (b) A certified copy of the travel documents of the family members.

However, if the applicant cannot provide these certificates, the authorities take into consideration other appropriate evidence.

On the other hand, if the refugee is an adult and the application refers to his or her parents and/or the application is not filed within 3 months from recognition, apart from the documents mentioned above, further documentation is needed:<sup>1034</sup>

- (c) Full Social Security Certificate, i.e. certificate from a public social security institution, proving the applicant’s full social security coverage; or
- (d) Tax declaration proving the applicant’s fixed, regular and adequate annual personal income, which is not provided by the Greek social welfare system, and which amounts to no less than the annual income of an unskilled worker – in practice about €8,500 – plus 20% for the spouse and 15% for each parent and child with which he or she wishes to be reunited;
- (e) A certified contract for the purchase of a residence, or a residence lease contract attested by the tax office, or other certified document proving that the applicant has sufficient accommodation to meet the accommodation needs of his or her family.

The Asylum Service has interpreted this article of P.D. 131/2006 in a pro-refugee way. Either a full social security certificate or tax declaration proving sufficient income is required (and not both of them). On the

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<sup>1033</sup> Article 14(1) PD 131/2006.

<sup>1034</sup> Article 14(3) PD 131/2006, citing Article 14(1)(d).

contrary, the Aliens Police Directorate, i.e. in cases of recognized applicants under the “old procedure” (PD 114/2010) requires both certificates after the three months of the recognition. Another difference is that Asylum Service starts counting the 3-month period from the deliverance of the recognition decision. On the contrary, for the Aliens Police Directorate this deadline starts from the issuance of this decision that in most of these cases took place more than 3 months before the deliverance of the decision. In practice, the Aliens Police Directorate is demanding from refugees to apply for family reunification before they even know that they are recognized as refugees. In November 2019, GCR represented a refugee before the First Instance Administrative Court of Athens regarding this matter and the decision is pending.

The abovementioned additional documents are not required in case of an unaccompanied child recognised as refugee, applying for family reunification after the 3-month period after recognition.<sup>1035</sup>

Refugees who apply for family reunification face serious obstacles which render the effective exercise of the right to family reunification impossible in practice. Lengthy procedures, administrative obstacles as regards the issuance of visas even in cases where the application for family reunification has been accepted, the requirement of documents which are difficult to obtain by refugees, and lack of information on the possibility of family reunification, the three-month deadline and the available remedies are reported among others.<sup>1036</sup>

The Council of Europe Commissioner for Human Rights notes that these administrative obstacles result in a short number of beneficiaries of international protection being able to initiate a family reunification procedure. Moreover, the deficiencies in the family reunification procedure sometimes result in families trying to reunite through dangerous irregular routes.<sup>1037</sup>

In 2019, 266 applications for family reunification were submitted before the Asylum Service. The Asylum Service took 22 positive decisions, 2 partially positive decisions and 29 negative decisions.<sup>1038</sup> The Asylum Service due to the nature of this procedure can not specify the time needed for a decision to be issued.<sup>1039</sup>

In February 2018, in a case supported by GCR, the Administrative Court of Athens annulled a decision rejecting the application for family reunification submitted by a refugee before the Aliens Police Directorate of Attica. The Court found that the rejection of the application had been issued in breach of the relevant legal framework.<sup>1040</sup> In November 2019, the Aliens Police Directorate issued again a negative decision on the same case. Following this decision, in January 2019 GCR’s Legal Unit applied again for the annulment of this second negative Decision of the Aliens Police Directorate, before the Administrative Court of Athens. The Decision of the Court is still pending by March 2020.

A long awaited Joint Ministerial Decision was issued in August 2018 on the requirements regarding the issuance of visas for family members in the context of family reunification with refugees.<sup>1041</sup> Among other provisions, this Decision sets out a DNA test procedure in order to prove family links and foresees interviews of the family members by the competent Greek Consulate. The entire procedure is described

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<sup>1035</sup> Article 14(3) PD 131/2006, citing Article 14(1)(d).

<sup>1036</sup> See e.g. Pro Asyl and Refugee Support Aegean, *Rights and effective protection exist only on paper: The precarious existence of beneficiaries of international protection in Greece*, 30 June 2017, available at: <http://bit.ly/2FkN0i9>, 26-27.

<sup>1037</sup> Council of Europe Commissioner for Human Rights, *Report of the Commissioner for Human Rights of the Council of Europe Dunja Mijatović following her visit to Greece from 25 to 29 June 2018*, CommDH(2018)24, 6 November 2018, paras 68-69.

<sup>1038</sup> Information provided by the Asylum Service, 17 February 2020.

<sup>1039</sup> Information provided by the Asylum Service, 17 February 2020.

<sup>1040</sup> Administrative Court of Athens, Decision 59/2018; GCR, ‘Πρώτη απόφαση διοικητικών δικαστηρίων για οικογενειακή επανένωση πρόσφυγα’, 8 February 2018, available in Greek at: <http://bit.ly/2FhY5EE>.

<sup>1041</sup> JMD 47094/2018, Gov. Gazette B/3678/28.08.2018.

in detail in the relevant handbook of the Ministry of Foreign Affairs.<sup>1042</sup> According to the Ministerial Decision, the refugee must pay €120 per DNA sample but until today the electronic fee (e-paravolo) is not available and thus the payment of the fee is not possible. In addition, the DNA kit must be sent from the Forensic Science Department (Διεύθυνση Εγκληματολογικών Ερευνών) that will conduct the test, to the Greek Consulate in the diplomatic pouch of the Ministry of Foreign Affairs. This is a procedure which can be proven lengthy.

In November 2019, GCR supported the first case on a DNA test Procedure in Greece. Although an initial positive decision for family reunification was issued, a DNA test has been ordered due to the doubts on the family link expressed by the competent Greek Consulate. In this case, there was no Greek Embassy in the country of origin and the family members had to present themselves at the Greek Embassy appointed as competent for the issuance of the visas, located in another country. However, during the DNA test procedure the visas of the refugee his family members for that country expired. Hence, they had to stay in that country for more than three months, waiting for the procedure to be finalized. In February 2020 the visas were finally issued.

In 2019, the applications for visa following a positive family reunification decision submitted before Greek Consulates, based on the abovementioned Joint Ministerial Decision, are as follows:<sup>1043</sup>

- **Beirut, Lebanon** received 21 applications for visas following a positive decision on family reunification and accepted 7 of them. 31 visas were issued in total. An interview has been conducted in 21 of the 37 cases processed since 2018. Delays occur mainly due to the difficulty in communication with the family members as well as the difficulty in free movement in Lebanon due to ongoing protests. In one case, the refugee family members waiting for the visas have fled to Sweden.
- **Istanbul, Turkey** received 5 family reunification cases. Since 2016, only in one case the visas were issued. It is unknown whether and when the family entered Greece. One other case was referred to the Greek Consulate in Ankara due to incompetence. In two cases only, interviews were conducted and one case is still pending. Delays occur mainly due to the difficulty in communication with the family members and the fact that a lot of them have moved since the day that application for family reunification was submitted.
- **New Delhi, India** There are no reunification cases so far.
- **Tehran, Iran** has issued visas for family reunification in less than 5 cases after conducting interviews. There is no information on whether the family members entered Greece and when. No DNA test was conducted.
- **Amman, Jordan** issued 5 visas for family reunification (one for a three-member family and one for a two-member family);
- **Nairobi, Kenya** received 6 applications for family reunification visas and accepted all of them, issuing the relevant visas. A personal interview was conducted in all cases. There was no need for conducting a DNA test in any of these cases.
- **Cairo, Egypt** received 11 cases of a positive decision on family reunification applications. An application for visa was filed in 5 cases, 3 of which were accepted and 2 of which rejected. In 4 cases, the refugee family members have not yet submitted applications for the issuance of visas, because they are still trying to collect the necessary documents. In one case the refugee's family members could not reach the Consulate and in one case the refugee informed the Greek Consulate that he returned to his country of origin and no longer wishes to continue the process of family reunification. Delays occur due to the difficulty of the family members who reside in Palestine to move to Cairo in order to complete the procedure in person. No DNA test was conducted and no laissez-passez was issued.

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<sup>1042</sup> Ministry of Foreign Affairs, *Immigration Code Handbook*, 2019, available in Greek at: <https://bit.ly/2BYHS3p>, 123-127.

<sup>1043</sup> Information provided by the Ministry of Foreign Affairs, 16 March 2020.



- **Ankara, Turkey** received one application for family reunification visa, concerning the wife and daughter of a recognised refugee in Greece. The Consulate was informed about the positive decision on family reunification on 1 October 2019 and the visas were issued on 10 December 2019; In this case the authenticity of the submitted documents was easy to prove, since the documents were issued by Turkish Authorities, the refugee's family members were Turkish citizens and the communication could be easily done in Turkish.
- **Rabat, Morocco received** two cases during 2019. One case is still pending. In one a DNA test was conducted in order to prove the family link.
- **Baghdad, Iraq** processed one family reunification case and issued the visas (for a mother and two minors). There is no information on whether the refugee family members entered Greece. One more case is pending.
- **Islamabad Pakistan** has not issued a visa for family reunification or conducted an interview or issued a special travel document (*laissez-passez*) because the refugee's family members never appeared in the Consulate's office.

## 2. Status and rights of family members

According to Article 23 PD 141/2013, as amended by Article 21 L 4375/2016, family members of the beneficiary of international protection who do not individually qualify for such protection are entitled to a renewable residence permit, which must have the same duration as that of the beneficiary.

However, if the family has been formed after entry into Greece, the law requires the spouse to hold a valid residence permit at the time of entry into marriage in order to obtain a family member residence permit.<sup>1044</sup> This requirement is difficult to meet in practice and may undermine the right to family life, since one must already have a residence permit in order to qualify for a residence permit as a family member of a refugee.

The relevant provision of the IPA, in force since 1 January 2020, has a similar content.<sup>1045</sup>

## C. Movement and mobility

### 1. Freedom of movement

According to Article 34 PD 141/2013, beneficiaries of international protection enjoy the right to free movement under the same conditions as other legally residing third-country nationals. No difference in treatment is reported between different international protection beneficiaries. As of 1 January 2020, the relevant provision is Article 34 of the IPA, with the same content.

### 2. Travel documents

Recognised **refugees**, upon request submitted to the competent authority, are entitled to a travel document (*titre de voyage*), regardless of the country in which they have been recognised as refugees in accordance with the model set out in Annex to the 1951 Refugee Convention.<sup>1046</sup> This travel document allows beneficiaries of refugee status to travel abroad, unless compelling reasons of national security or public order exist. The abovementioned travel document is issued from the Passport Directorate of the

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<sup>1044</sup> Article 21(4) L 4375/2016.

<sup>1045</sup> Article 23(2) IPA, Article 24(4) IPA.

<sup>1046</sup> Article 25(1) PD 141/2013 and L. 4636/2019(IPA).

Hellenic Police Headquarters,<sup>1047</sup> subject to a fee of €85.<sup>1048</sup> These travel documents are valid for 5 years for adults and can be renewed.<sup>1049</sup>

The same applies to beneficiaries of **subsidiary protection**, if they are unable to obtain a national passport, unless compelling reasons of national security or public order exist.<sup>1050</sup> In practice, beneficiaries of subsidiary protection must present to the Greek authorities verification from the diplomatic authorities of their country of origin, certifying their inability to obtain a national passport. This prerequisite is extremely onerous, as beneficiaries of subsidiary protection may also fear persecution or ill-treatment from their country of origin. Furthermore, the issuance of this verification lies upon the discretion of the diplomatic authorities of their country of origin and depends on the policy of each country. The travel documents issued for beneficiaries of subsidiary protection are valid for 3 years and can be renewed.<sup>1051</sup>

According to Ministerial Decision 1139/2019, travel documents should not be issued to refugees convicted for falsification and use of false travel documents. Travel documents cannot be issued for five years following the conviction, or for ten years in case of a felony.<sup>1052</sup>

The same Ministerial Decision regulates the issuance of travel documents for minors accompanied by one of their parents who exercises on his/her own the parental care of the child, but does not possess documents establishing the parental care of the child. More precisely travel documents for the minor can be issued upon submission of a declaration on oath before the District Court or a Notary when the following conditions are met:

- the minor is granted refugee status and is present in Greece with one of his/her parent;
- this parent is also exercising the parental care due to facts or legal acts previously registered in the country of origin, and
- this parent does not possess documents proving that he/she is exclusively exercising the parental care.

This long-awaited Ministerial Decision simplified the procedure for the issuance of travel documents for minors of single-headed families. However, this provision does not apply to cases where the parent is exercising the sole parental custody due to facts or legal acts registered in a country other than the country of their origin. In this case, if no supporting documents can be provided, travel documents for the minor can be requested by the single parent under the condition that the parental care/responsibility has been assigned to him/her on the basis of a decision of a Greek court.<sup>1053</sup>

The waiting period for the issuance of travel documents can prove lengthy and may exceed 8 months in some cases, as far as GCR is aware.

In May 2019, the Asylum Service started the process of electronic renewal of travel documents. The application for renewal of travel documents is submitted via e-mail and further supporting documents must be sent to the Asylum Service via post. The application is completed with the receipt of the required supporting documents from the applicants. Therefore, the time for processing the application by the Asylum Service depends on the time of sending and receiving all required supporting documents. From the time of receipt of these documents, the average time for the issuance of a travel document renewal

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<sup>1047</sup> Article 25(2) PD 141/2013 and L. 4636/2019 (IPA).

<sup>1048</sup> Asylum Service, *Frequently asked questions on the rights of asylum seekers and beneficiaries of international protection*, 18 February 2015, available in Greek at: <http://bit.ly/2jGtlw0>.

<sup>1049</sup> Joint Ministerial Decision 10566/2014, Gov. Gazette B/3223/02.12.2014, available in Greek at: <http://bit.ly/2lmEMwy>.

<sup>1050</sup> Article 25(4) IPA.

<sup>1051</sup> Article 1(2) Ministerial Decision 1139/2019, Gov. Gazette 4736/B/20.12.2019.

<sup>1052</sup> Article 5 Ministerial Decision 1139/2019, Gov. Gazette 4736/B/20.12.2019.

<sup>1053</sup> Article 1(7) Ministerial Decision 1139/2019.

decision is one and a half (1.5) months. In 2019, 139 applications for Travel Documents renewal were submitted and 81 positive decisions were taken.<sup>1054</sup>

## D. Housing

### Indicators: Housing

1. For how long are beneficiaries entitled to stay in ESTIA accommodation?	1 month
2. Number of beneficiaries staying in ESTIA as of 31 December 2019	6,822 <sup>1055</sup>

According to Article 30 PD 141/2013, beneficiaries of international protection should enjoy the same rights as Greek citizens and receive the necessary social assistance, according to the terms applicable to Greek citizens. However, administrative and bureaucratic barriers, lack of state-organised actions in order to address their particular situation, non-effective implementation of the law, and the impact of economic crisis prevent international protection holders from the enjoyment of their rights, which in some cases may also constitute a violation of the principle of equal treatment enshrined in L 3304/2005, transposing Directives 2000/43/EU and 2000/78/EU. The same provision is included in the IPA.

17,355 people were granted international protection in 2019, up from 15,192 in 2018 and 10,351 in 2017.<sup>1056</sup> As noted by UNHCR, “[t]here is a pressing need to support refugees to lead a normal life, go to school, get healthcare and earn a living. This requires key documents that allow access to services and national schemes, enable refugees to work and help their eventual integration in the host communities [...] UNHCR advocates for refugees to be included in practice in the national social solidarity schemes, as for example the Social Solidarity Income and the Rental Allowance Scheme. While eligible, many are excluded because they cannot fulfil the technical requirements, as for example owning a house, or having a lease in their name”.<sup>1057</sup> In any event, the impact of the financial crisis on the welfare system in Greece and the overall integration strategy should be also taken into consideration when assessing the ability of beneficiaries to live a dignified life in Greece.

Moreover, a number of measures restricting the access of recognized beneficiaries of international protection to social benefits and accommodation were announced in March 2020.

As stated by the Minister for Migration and Asylum, “our aim is to grant asylum to those entitled within 2-3 months and from then on we cut any benefits and accommodation, as all this works as a pull factor ... Greece is cutting these benefits. Anyone after the recognition of the asylum status is responsible for himself”.<sup>1058</sup>

Indeed, an amendment to the asylum legislation in early March 2020 states that “after the issuance of the decision granting the status of international protection, material reception conditions in form of cash or in kind are interrupted. Said beneficiaries residing in accommodation facilities, including hotels and apartments have the obligation to leave them, in a 30-days period since the communication of the decision granting international protection”. Unaccompanied minors have the legal obligation to leave the facilities within 30 days of reaching the age of majority. Special categories of beneficiaries for whom the provision

<sup>1054</sup> Information provided by the Asylum Service, 17 February 2020.

<sup>1055</sup> UNHCR, *Greece Accommodation Update*, December 2019, available at: <https://bit.ly/2TUU3pY>.

<sup>1056</sup> Information provided by the Asylum Service, 17 February 2020; Asylum Service, *Statistical data*, December 2018.

<sup>1057</sup> UNHCR, *Greece Fact Sheet*, 1-31 January 2019.

<sup>1058</sup> Protothema.gr, End of the benefits to refugees according to Mitarakis, 7 March 2020, available in Greek at: <https://bit.ly/2lwvE51>.

of benefits or deadline to leave the facility is extended, and “in particular persons with a serious health condition”, may be foreseen by a ministerial Decision.<sup>1059</sup>

With a Ministerial Decision, issued on 7 April 2020, recognized refugees have been granted a deadline up until 31 May 2020, in order to leave the accommodation facilities due to the COVID-19 outbreak.<sup>1060</sup>

In general terms and according to the law beneficiaries of international protection have access to accommodation under the conditions and limitations applicable to third-country nationals residing legally in the country.<sup>1061</sup>

There is limited accommodation for homeless people in Greece and no shelters are dedicated to recognised refugees or beneficiaries of subsidiary protection. There is no provision for financial support for living costs. In **Athens**, for example, there are only four shelters for homeless people, including Greek citizens and third-country nationals lawfully on the territory. At these shelters, beneficiaries of international protection can apply for accommodation, but it is extremely difficult to be admitted given that these shelters are always overcrowded and constantly receiving new applications for housing.

According to GCR’s experience, those in need of shelter who lack the financial resources to rent a house remain homeless or reside in abandoned houses or overcrowded apartments, which are on many occasions subletted. Pro Asyl and Refugee Support Aegean also document cases of beneficiaries of international protection living under deplorable conditions, including persons returned from other EU countries.<sup>1062</sup> For example, in a report issued in January 2019, Pro Asyl and RSA, have documented the living conditions faced by a vulnerable four-member family of refugees returned from Switzerland at the end of August 2018. Upon their return to Greece, the family ended up homeless, was denied crucial benefits and the parents could not find employment. According to the findings of the organisations, “refugees still have no secure and effective access to shelter, food, the labour market and healthcare including mental health care. International protection status in Greece cannot guarantee a dignified life for beneficiaries of protection and is no more than protection ‘on paper’”.<sup>1063</sup>

In 2017 the UN Human Rights Committee ruled that the potential return of an unaccompanied Syrian child granted international protection in Greece would be contrary to the ICCPR, *inter alia* due to the “conditions of reception of migrant minors in Greece”.<sup>1064</sup> In 2018, in a number of cases domestic courts, taking into account the findings of the Committee, have prevented the return of recognised beneficiaries of international protection to Greece from other Member States.<sup>1065</sup>

On 15 July 2019, the Dutch Council of State held that two recognised refugees should not be returned to Greece without proper justification by the Dutch State. The case concerned a single mother and her daughter who was having severe psychological problems. The Court ruled that the extreme vulnerability

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<sup>1059</sup> Article 114 L. 4636/2019, as amended by Article 111 L. 4674/2020. Said ministerial Decision, has been issued on 7 April 2020 (JMD No 13348, Gov. Gazzetta B’ 1190/7-4-2020).

<sup>1060</sup> JMD No 13348, Gov. Gazzetta B’ 1190/7-4-2020.

<sup>1061</sup> Article 33 PD 141/2013 and L. 4636/2019.

<sup>1062</sup> Pro Asyl and Refugee Support Aegean, *Rights and effective protection exist only on paper: The precarious existence of beneficiaries of international protection in Greece*, 30 June 2017, 14-16; *Update: Legal Note on the living conditions of beneficiaries of international protection in Greece*, 30 August 2018, available at: <https://bit.ly/2GNuIQp>; Returned recognized refugees face a dead-end in Greece, 9 January 2019, available at: <https://bit.ly/3aH0KmA>.

<sup>1063</sup> Pro Asyl and Refugee Support Aegean, Returned recognized refugees face a dead-end in Greece, *ibid*.

<sup>1064</sup> Human Rights Committee, *O.Y.K.A. v. Denmark*, Communication No 2770/2016, 30 November 2017.

<sup>1065</sup> See e.g. German Administrative Court of Bremen, Decision 5 V 837/18, 12 July 2018. Contrast German Administrative Court of Ansbach, Decision AN 14 K 18.50495, 20 September 2018; AN 14 S 18.50697, 26 September 2018; Dutch Regional Court of Gravenhage, Decision NL18.8338, 18 June 2018; Dutch Regional Court of Amsterdam, Decision NL18.13530, 15 August 2018; Dutch Regional Court of Arnhem, Decision NL17.12258, 29 November 2018.

of the daughter and the extent to which she depends on her mother will make it more difficult for both of them to effectuate their rights in Greece. The Secretary of State has to reassess the case and explain why the two refugees will not find themselves in a situation of extreme material poverty, because of their particular vulnerability if they were transferred to Greece.<sup>1066</sup>

During the previous years and in 2019 a number of efforts have been made in order to provide a transitional period to recognized refugees, who already were accommodated under an accommodation scheme. However, these welcome efforts refer to a relatively small number of beneficiaries and are provided only for a short period. In any event, and as mentioned above according to a March 2020 amendment of the national legislation beneficiaries of international protection are ordered to leave for accommodation facilities, including the ESTIA apartments, open reception facilities etc., within 30 days since the communication of the decision granting the status, while all benefits in cash or in kind are interrupted from the issuance of the decision on the international protection application.<sup>1067</sup> This is for example the case for the beneficiaries under UNHCR accommodation and cash assistance scheme (ESTIA). According to the statistics, at the end of 2019, 6,822 beneficiaries of international protection were provided accommodation in apartments through the UNHCR scheme<sup>1068</sup> and 15,500 received cash assistance.<sup>1069</sup> These persons are directly affected by the March 2020 amendment.

Apart for the transitional period, in July 2019, as part of the National Integration Strategy,<sup>1070</sup> a programme was launched ("HELIOS 2"). This aimed at promoting the integration of beneficiaries of international protection currently residing in temporary accommodation schemes into the Greek society through different actions, such as integration courses, accommodation and employability support. The project is implemented by IOM and its partners, with the support of the Greek government and will last up until November 2020. In order to enrol in the project, beneficiaries must meet all the following criteria: a) be a beneficiary of international protection b) have been recognised as beneficiary of international protection after 01 January 2018 and c) be officially registered and reside in an Open Accommodation Centre, Reception and Identification Centre, a hotel of the IOM FILOXENIA project or in the ESTIA program.

As far as the accommodation is concerned, the project aims to support 5,000 beneficiaries towards independent accommodation in apartments rented on their name, through contributions for rent for a period of 6 months and move-in costs, as well as networking with apartment owners. From the launch of the programme to 3 January 2020, 5,846 beneficiaries are enrolled in HELIOS and received support for independent living, while 568 beneficiaries received rental subsidies upon finding independent housing.<sup>1071</sup>

## E. Employment and education

### 1. Access to the labour market

Article 69 L 4375/2016 provides for full and automatic access to the labour market for recognised refugees and subsidiary protection beneficiaries under the same conditions as nationals, without any obligation to obtain a work permit.

However, as mentioned in [Reception Conditions: Access to the Labour Market](#), high unemployment rates and further obstacles that might be posed by competition with Greek-speaking employees, prevent the

<sup>1066</sup> Dutch Council of State, ECLI:NL:RVS:2019:2385, 17 July 2019.

<sup>1067</sup> Article 114 L. 4636/2019, as amended by Article 111 L. 4674/2020.

<sup>1068</sup> UNHCR, *Greece Accommodation Update*, December 2019.

<sup>1069</sup> UNHCR, *Greece Cash Assistance Update*, December 2019.

<sup>1070</sup> Ministry of Migration Policy, 'National Integration Strategy', July 2019, available in Greek at: <https://bit.ly/3cJdtH7>.

<sup>1071</sup> HELIOS FACTSHEET, 16 July 2019 – 03 January 2020

integration of beneficiaries into the labour market. Third-country nationals remain over-represented in the relevant unemployment statistical data. As found in a 2018 research “[t]hose few who manage to find a job are usually employed in the informal economy, which deprives them of access to social security, and subjects them to further precariousness and vulnerability. Henceforth, the vast majority of international protection beneficiaries and applicants rely on food, non-food item and financial assistance distributions to meet their basic needs. This often forces them into dangerous income generating activities, and extends the need for emergency services, increases the risk of exploitation, and hinders their integration prospects.”<sup>1072</sup>

The National Integration Strategy<sup>1073</sup> provides for several actions to improve access to employment for beneficiaries of international protection. These include a pilot vocational training program for 8,000 recognized refugees in Attica and Central Macedonia in collaboration with the Ministry of Labor and an employment program in the agricultural sector for 8,000 refugees in collaboration with the Ministry of Agricultural Development. However, these actions have yet to be implemented.<sup>1074</sup>

Similar to asylum seekers, beneficiaries of international protection face obstacles in the issuance of Tax Registration Number (AFM), which hinder their access to the labour market and registration with the Unemployment Office of OAED. According to GCR’s experience, issuance of an AFM is riddled by severe delays. The procedure for competent Tax Offices to verify refugees’ personal data through the Asylum Service takes approximately 2 months. In case of a professional (εταιρικό) AFM, the procedure takes more than 3.5 months and requires the assistance of an accountant.

## 2. Access to education

Children beneficiaries of international protection have an obligation to study at primary and secondary education institutions of the public education system, under the same conditions as nationals.<sup>1075</sup> Similar to [Reception Conditions: Access to Education](#), the new L. 4636/2019 refers not to a right to education but to a duty on beneficiaries of international protection.

Adult beneficiaries are entitled to access the education system and training programmes under the same conditions as legally residing third-country nationals.<sup>1076</sup> The number of children beneficiaries of international protection enrolled in formal education is not known. However, the total number of asylum-seeking and refugee children enrolled is 11,700 (see [Reception Conditions: Access to Education](#)).<sup>1077</sup>

A number of Greek language classes are provided by universities, civil society organisations and centres for vocational training. However, as noted by UNHCR, “the lack of Greek language classes, which most perceive to be required for integration, was a commonly referenced issue”.<sup>1078</sup> A pilot programme of Greek language courses funded by the Asylum, Migration and Integration Fund (AMIF) announced in January 2018 had not been implemented at least by April 2019 due to bureaucracy and disagreement among the competent Ministries.<sup>1079</sup> Finally, this programme was included in the HELIOS project and has been

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<sup>1072</sup> ELIAMEP, *Refugee Integration in Mainland Greece: Prospects and Challenges*, March 2018, available at: <https://bit.ly/2T5untb>, 3

<sup>1073</sup> Statement of the Secretary General for Migration Policy at the presentation of the National Integration Strategy, see Ministry for Migration Policy, Press release: Presentation of the “National Integration Strategy”, 17 January 2019.

<sup>1074</sup> CNN, ‘Στα «χαρτιά» η εθνική στρατηγική για την ένταξη των μεταναστών’, 30 September 2019, available in Greek at: <https://bit.ly/2W03do0>.

<sup>1075</sup> Article 28(1) PD 141/2013 and L. 4636/2019 .

<sup>1076</sup> Article 28(2) PD 141/2013 and L. 4636/2019.

<sup>1077</sup> UNICEF, *Refugee and migrant children in Greece as of 31 January 2019*, available at: <https://uni.cf/2SH2pz4>.

<sup>1078</sup> UNHCR, *Inter-agency Participatory Assessment Report*, October 2018.

<sup>1079</sup> Kathimerini, ‘Προσφυγικό: Τα μαθήματα ελληνικών χάθηκαν στη μετάφραση’, 13 April 2019, available in Greek at: <https://bit.ly/38RAjcl>.

implemented since June 2019 by IOM and its partners.<sup>1080</sup> Moreover, the Municipality of Athens regularly organizes Greek language courses for adult immigrants, as well as IT seminars, for, among others, adult refugees.<sup>1081</sup>

## F. Social welfare

The law provides access to social welfare for beneficiaries of international protection without drawing any distinction between refugees and beneficiaries of subsidiary protection. Beneficiaries of international protection should enjoy the same rights and receive the necessary social assistance according to the terms that apply to nationals, without discrimination.<sup>1082</sup>

### Types of social benefits

Not all beneficiaries have access to social rights and welfare benefits. In practice, difficulties in access to rights stem from bureaucratic barriers, which make no provision to accommodate the inability of beneficiaries to submit certain documents such as family status documents, birth certificates or diplomas, or even the refusal of civil servants to grant them the benefits provided, contrary to the principle of equal treatment as provided by Greek and EU law.<sup>1083</sup>

**Family allowance:** The family allowance is provided to families that can demonstrate 10 years of permanent and uninterrupted stay in Greece. As a result, the majority of beneficiaries of international protection are excluded from this benefit.

**Single mother allowance:** Allowance to single mothers is provided to those who can provide proof of their family situation e.g. divorce, death certificate, birth certificate. With no access to the authorities of their country, many mothers are excluded because they cannot provide the necessary documents.

**Single child allowance:** The single child support allowance replaced the pre-existing family allowances and is provided explicitly to refugees or beneficiaries of subsidiary protection.<sup>1084</sup>

**Birth allowance:** The newly established birth allowance is granted to the mother who is legally and permanently residing in Greece and amounts to €2,000 for every child born in Greece. Third country nationals are entitled to receive this allowance if they can demonstrate 12 years of permanent stay in Greece. Exceptionally for the births that will take place in the years 2020-2023 the allowance will be granted to the mother – third country national, if she has been permanently residing in Greece since 2012. The permanent stay is proved with the submission of tax declarations. Hence, the vast majority of beneficiaries of international protection are practically excluded from this benefit.<sup>1085</sup>

**Student allowance:** Furthermore, beneficiaries of international protection are excluded by law from the social allowance granted to students, which amounts to €1,000 annually. According to the law, this allowance is provided only to Greek nationals and EU citizens.<sup>1086</sup>

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<sup>1080</sup> IOM, *Hellenic Integration Support for Beneficiaries of International Protection (HELIOS)*, available at: <https://bit.ly/3d9OJbp>.

<sup>1081</sup> City of Athens, 'Εκπαιδευτικά Προγράμματα', available in Greek at: <https://www.cityofathens.gr/node/2545>.

<sup>1082</sup> Articles 29 and 30 PD 141/2013 ανδ Λ. 4636/2019.

<sup>1083</sup> Pro Asyl and Refugee Support Aegean, *Rights and effective protection exist only on paper: The precarious existence of beneficiaries of international protection in Greece*, 30 June 2017, 22-24; ELIAMEP, *Refugee Integration in Mainland Greece: Prospects and Challenges*, March 2018, 4-5.

<sup>1084</sup> Article 214 L. 4512/2018, as amended by Article 15 L. 4659/2020.

<sup>1085</sup> Articles 1 and 7 L. 4659/2020.

<sup>1086</sup> Article 10 L 3220/2004.

**Disability benefits:** Beneficiaries of international protection with disabilities also face great difficulties in their efforts to access welfare benefits. First they have to be examined by the Disability Accreditation Centre to assess whether their disability is at a level above 67%, in order to be eligible for the Severe Disability Allowance.<sup>1087</sup> Even if this is successfully done, there are often significant delays in the procedure.

**KEA:** Since February 2017, the Social Solidarity Income (*Κοινωνικό Επίδομα Αλληλεγγύης*, KEA) is established as a new welfare programme regulated by Law 4389/2016.<sup>1088</sup> This income of €200 per month for each household, plus €100 per month for each additional adult of the household and €50 per month for each additional child of the household, was intended to temporarily support people who live below the poverty line in the current humanitarian crisis, including beneficiaries of international protection.

KEA is granted based on the following criteria: family status and family members; income; and assets. It is described as a solidarity programme connected to supplementary services, such as access to social services that may provide cheaper electricity or water.

However, the preconditions are difficult to meet. In order to receive KEA:

- Each member of the household must obtain a Tax Registration Number (AFM), a Social Security Number (AMKA) and a bank account;
- Each household must legally and permanently reside in Greece;
- The following documents are required to prove their residence: (a) for residence in owner-occupied property, a contract certifying ownership and utility bills for state-owned enterprises; (b) for residence in rented property, a copy of the electronic lease agreement, plus utility bills; (c) for residence in a property based on free concession, the concession agreement and bills for state-owned enterprises. In case of homelessness, homeless applicants are required to submit a homelessness certificate issued by the municipality or by shelter or a day-centre. It is obviously almost impossible for homeless beneficiaries to provide all of these documents, meaning that they cannot apply for the allowance.

Unfortunately, except for KEA, there are no other effective allowances in practice. There is no provision of state social support for vulnerable cases of beneficiaries such as victims of torture. The only psychosocial and legal support addressed to the identification and rehabilitation of torture victims in Greece is offered by three NGOs, GCR, Day Centre Babel and MSF, which means that the continuity of the programme depends on funding.

**Uninsured retiree benefit:** Finally, retired beneficiaries of international protection, in principle have the right to the Social Solidarity Benefit of Uninsured Retirees.<sup>1089</sup> However, the requirement of 15 years of permanent residence in Greece in practice excludes from this benefit seniors who are newly recognised beneficiaries. The period spent in Greece as an asylum seeker is not calculated towards the 15-year period, since legally the application for international protection is not considered as a residence permit.

The granting of social assistance is not conditioned on residence in a specific place.

## G. Health care

Free access to health care for beneficiaries of international protection is provided under the same conditions as for nationals,<sup>1090</sup> pursuant to L 4368/2016. The new International Protection Act has not changed the relevant provisions. Despite the favourable legal framework, actual access to health care

<sup>1087</sup> JMD Γ4α/Φ. 225/161, Official Gazette 108/B/15.2.1989.

<sup>1088</sup> Article 235 L 4389/2016. See KEA, 'Πληροφορίες για το KEA', available in Greek at: <http://bit.ly/2HcB6XT>.

<sup>1089</sup> Article 93 L 4387/2016.

<sup>1090</sup> Article 31(2) IPA.



services is hindered in practice by significant shortages of resources and capacity for both foreigners and the local population, as a result of the austerity policies followed in Greece, as well as the lack of adequate cultural mediators. “The public health sector, which has been severely affected by successive austerity measures, is under extreme pressure and lacks the capacity to cover all the needs for health care services, be it of the local population or of migrants”.<sup>1091</sup> Moreover, administrative obstacles with regard to the issuance of a Social Security Number (AMKA) also impede access to health care. In addition, according to GCR’s experience, beneficiaries of international protection under the “old” system who possess the “old” residence permit in the form of a “booklet”, have encountered problems in the issuance of AMKA, as this old residence permit contains a number written in a different format than the new residence permits. Hence, the employees at the Citizen Service Center (ΚΕΠ) did not know how to process the issuance of AMKA. Finally, it has been clarified that this will happen at the offices of the Single Social Security Entity (ΕΦΚΑ).

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<sup>1091</sup> Council of Europe, *Report by Commissioner for Human Rights Dunja Mijatovic following her visit to Greece from 25 to 29 June 2018*, CommDH(2018)24, 6 November 2018, para 40.

## ANNEX I – Transposition of the CEAS in national legislation

The following section contains an overview of incompatibilities in transposition of the CEAS in national legislation:

Directive	Provision	Domestic law provision	Non-transposition or incorrect transposition
<b>Directive 2011/95/EU</b> Recast Qualification Directive	-	-	-
<b>Directive 2013/32/EU</b> Recast Asylum Procedures Directive	28(1)	Article 81(1) IPA	<p>The Directive requires Member States to ensure that the determining authority can either discontinue the procedure or, in case it is satisfied on the basis of available evidence that the claim is unfounded, to issue a rejection decision. Article 81(1) IPA only provides that, in the case of implicit withdrawal, the determining authority shall reject an application as unfounded after adequate examination. Accordingly, (i) it does not permit the Asylum Service to discontinue the procedure, and (ii) does not clearly condition the issuance of a negative decision on the authority being satisfied on the basis of available evidence that the claim is unfounded. The provision has therefore incorrectly transposed the Directive.</p> <p>NOTE: Article 81 (1) of the IPA has been amended by Article 13(1) of L. 4686/2020, Gov. Gazette A 96/12 May 2020. The May 2020 amendment provides for the possibility of discontinuing the procedure in case of an implicit withdrawal and if an adequate examination of the substance of the Application is not possible.</p>
	31(8)	Article 83(9) IPA	<p>The IPA exceeds the permissible grounds for applying the accelerated procedure, given that it foresees as grounds for using the procedure cases where the applicant (i) refuses to comply with the obligation to be fingerprinted under domestic legislation, or (ii) is a vulnerable person or a person in need of special procedural guarantees who receives adequate support.</p> <p>Article 31(8) of the Directive does not allow for vulnerability or need of special procedural guarantees to be deemed <i>per se</i> a reason for subjecting an applicant to the accelerated procedure. It should be recalled that the accelerated procedure under the IPA entails shorter deadlines and a derogation from automatic suspensive effect of appeals.</p>

			NOTE: Article 61 L. 4686/2020, Gov. Gazette A 96/12 May 2020 abolished the vulnerability/special procedural guarantees as a ground for applying the accelerated procedure.
	32(2)	Article 88(2) IPA Article 78(9) IPA Article 97 IPA	<p>Under the Directive, Member States may only consider an application as manifestly unfounded where one of the grounds laid down in Article 31(8) apply. The IPA has transposed this provision in Article 88(2) IPA, which includes all ten of those grounds.</p> <p>However, Article 78 (9) IPA adds that “failure to comply with the obligation to cooperate with the competent authorities... in particular non-communication with the authorities and non-cooperation in the establishment of the necessary elements of the claim” constitutes a ground for deeming the application manifestly unfounded pursuant to Article 88(2). Moreover, Article 97 IPA provides that in case that the Applicant does not comply with the obligation to present himself/herself before the Appeals Committee on the day of the examination of the Appeal, the Appeal is rejected as manifestly unfounded.</p> <p>Articles 78(9) and 97 IPA introduce additional grounds on which an application can be considered as manifestly unfounded grounds beyond the boundaries set by Article 32(2) of the Directive.</p> <p>NOTE: Article 78(9) IPA has been amended by Article 11(3) L. 4686/2020, Gov. Gazette A 96/12 May 2020. According to the amendment introduced the “failure of the applicant to comply with the obligation to cooperate with the authorities” is considered as a ground for considering that the application has been implicitly withdrawn. However, according to Article 17(1) L. 4686/2020, added an additional ground for considering an application as manifestly unfounded in Article 88(2) IPA. In accordance with said amendment, an application can be considered as manifestly unfounded in case that “the applicant has grossly not complied with his/her obligation to cooperate with the authorities”. This is also a ground beyond Article 32(2) of the Directive.</p>
	38 (2)	Article 86(1) IPA	<p>Article 86(1)(f) IPA, with regards the safe third country concept, provides that transit through a third country may be considered as such a “connection” in conjunction with specific circumstances, on the basis of which it would be reasonable for that person to go to that country. In <i>LH</i> the CJEU ruled that The compatibility of said provision with Article 38(2) of the Directive, in particular under the light of <i>LH</i> ruled that “the transit of the applicant from a third country cannot constitute as such a valid ground in order to be considered that the applicant could reasonably return in this country”, C-564/18 (19 March 2020). Moreover, contrary to Article 38(2) of the Directive, national law does not foresees the methodology to be followed by the authorities in order to assess whether a country qualifies as a “safe third country” for an individual applicant.</p>

	46(6)(a)	104(2)(c)	<p>The IPA, provides that appeals against decisions declaring an application manifestly unfounded are never automatically suspensive, even where they are based on the applicant not applying as soon as possible. This is contrary to the Directive, which states that appeals against manifestly unfounded applications based on Article 32(2) in conjunction with Article 31(8)(h) have automatic suspensive effect.</p> <p>NOTE: Article 104(2) IPA has been amended by Article 26(2) L. 4686/2020. Subparagraph (c) of Article 104(2) IPA is not included in the amended provision.</p>
<p><b>Directive 2013/33/EU</b>                      Recast                      Reception                      Conditions                      Directive</p>	20(4)	Article 57(4) IPA	<p>The IPA allows for the withdrawal of material reception conditions where the applicant seriously breaches the house rules of reception centres or demonstrates violent conduct. Such a measure is not permitted by the Directive, as clarified by the CJEU in <i>Haqbin</i>.</p>