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Date: 25/08/2020

### DH-DD(2020)723

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

Communication from NGOs (Refugee Support Aegean, Foundation PRO ASYL) (28/07/2020) concerning the cases of M.S.S. v. Belgium and Greece and RAHIMI v. Greece (Applications No. 30696/09, 8687/08).

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

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

Communication d'ONG (Refugee Support Aegean, Foundation PRO ASYL) (28/07/2020) 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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DGI

28 JUIL. 2020

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

# **RSA & Stiftung PRO ASYL** **Submission to the Committee of** **Ministers of the Council of Europe**

in the cases of *M.S.S. v. Belgium*  
*and Greece & Rahimi v. Greece*

July 2020

## Introduction

1. Ahead of the 1383<sup>th</sup> Human Rights meeting of the Committee of Ministers of the Council of Europe on the supervision of the execution of the *M.S.S. v. Belgium and Greece* and *Rahimi v. Greece* judgments of the European Court of Human Rights (hereafter “the Court”), Refugee Support Aegean (RSA) and Stiftung PRO ASYL wish to submit to the Committee an update on the latest developments in selected aspects of the Greek asylum system relevant to the supervision of the aforementioned judgments, pursuant to Rule 9.2 of the Rules of the Committee.
2. RSA is a non-profit organisation focusing on: strategic litigation in support of refugees; monitoring human rights violations; and the provision of legal, social and humanitarian support in individual cases. RSA is an implementing partner of the PRO ASYL litigation project “Refugee Support Program Aegean” (RSPA). This submission draws upon information obtained *inter alia* through cases represented by RSA before administrative authorities and courts at domestic and European level, as well as research in Reception and Identification Centres (RIC) on the islands and camps in mainland Greece.
3. The submission is structured as follows:

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## Legal and institutional framework

4. RSA and Stiftung PRO ASYL recall that the *M.S.S. / Rahimi* group of cases cover the core areas and guarantees of a fair and efficient asylum procedure and reception system in Greece. The findings of the Court in these cases remain pertinent nearly ten years on, despite numerous legislative and institutional reforms<sup>1</sup> of the Greek asylum system and the actors in charge of refugee status determination and protection.
5. According to the Government observations to this Committee, Greece is dealing with “new challenges” and a “new crisis” stemming from increased numbers of arrivals over the past year. In its recent ruling in *N.H. v. France*, however, the Court stressed that a **consistent increase in arrivals and strain on a country’s reception system differs from an exceptional crisis.**<sup>2</sup> The Court’s case law in any event maintains that, given the absolute nature of Article 3 of the European Convention on Human Rights (ECHR), states may not rely on the existence of a large influx of arrivals to justify non-compliance with their obligations.<sup>3</sup> RSA and Stiftung PRO ASYL stress that the Greek asylum system has been operating in a **declared crisis mode for more than four consecutive years, as illustrated by the trigger of the fast-track border procedure in April 2016 and its uninterrupted implementation until the end of 2020.**<sup>4</sup> The response of the Greek State to all aspects of refugee protection (accommodation, health care, interpretation, legal aid) largely remains **project-based and dependent upon time-limited EU funding which does not guarantee continuity and sustainability of support.**
6. Immediately upon taking office in July 2019, the Government abolished the Ministry of Migration Policy and transferred competence for asylum and migration policies to the Ministry of Citizen Protection,<sup>5</sup> only to re-establish a Ministry of Migration and Asylum in January 2020.<sup>6</sup> More recent reforms have established existing reception facilities as Regional Reception and Identification Services without regulating their operation,<sup>7</sup> and have transferred competence for the protection of unaccompanied migrant children from the Ministry of Labour to the Special Secretariat for the Protection of Unaccompanied Children within the Ministry of Migration and Asylum.<sup>8</sup> The latter move has been sharply criticised by staff of the National Centre for Social Solidarity (*Εθνικό Κέντρο Κοινωνικής Αλληλεγγύης, ΕΚΚΑ*), who state *inter alia* that the Special Secretariat lacks sufficient and qualified personnel.<sup>9</sup>
7. For its part, the Asylum Service continues to operate substantially on the basis of temporary personnel, with 625 out of 997 staff members **(63%) being employed on short-term contracts** according to the figures provided by the Government to the Committee. In addition, key positions within the Asylum Service have been filled by

<sup>1</sup> PD 81/2009, Gov. Gazette A' 99/30.06.2009; PD 114/2020, Gov. Gazette A' 195/22.11.2010; PD 113/2013, Gov. Gazette A' 146/14.06.2013; L 4375/2016, Gov. Gazette A' 51/3.4.2016; L 4399/2016, Gov. Gazette A' 117/22.06.2016; L 4461/2017, Gov. Gazette A' 38/28.03.2017; L 4540/2018, Gov. Gazette A' 91/22.05.2018; L 4636/2019, Gov. Gazette A' 69/1.11.2019; L 4686/2020, Gov. Gazette A' 96/12.05.2020.

<sup>2</sup> ECtHR, *N.H. v. France*, App No 28820/13, 2 July 2020, para 182.

<sup>3</sup> ECtHR, *M.S.S. v. Belgium and Greece* [GC], App No 30696/09, 21 January 2011, para 223; *Khlaifia v. Italy* [GC], App No 16483/12, 15 December 2016, para 184; *N.H. v. France*, App No 28820/13, 2 July 2020, para 157.

<sup>4</sup> Article 80(26) L 4375/2016, as subsequently amended by Article 86(20) L 4399/2016, Article 96(4) L 4485/2017, Article 28(23) L 4540/2018 and Article 7(3) L 4587/2018; Joint Ministerial Decision 1333/2019, Gov. Gazette B' 4892/31.12.2019.

<sup>5</sup> PD 81/2019, Gov. Gazette A' 119/8.7.2019.

<sup>6</sup> PD 4/2020, Gov. Gazette A' 4/15.1.2020.

<sup>7</sup> Joint Ministerial Decision 2945/2020, Gov. Gazette B' 1016/24.03.2020.

<sup>8</sup> Article 60 IPA, as amended by Article 4 L 4686/2020.

<sup>9</sup> National Union of EKKA Staff, 'Διαμαρτυρία: Αναθεώρηση πολιτικής για τα ασυνόδευτα ανήλικα', No 60, 10 July 2020.

way of political appointees (μετακλητοί).<sup>10</sup> **Constant staff turnover hampers continuity of work, institutional memory and the build-up of expertise in the area of asylum.** These deficiencies in turn **affect of the quality of refugee status determination** and prevent the Asylum Service from effectively evolving into a fully-fledged administrative mechanism for asylum in Greece.

8. The different branches of the Greek administration do not have coordinated access to the national electronic database (Αλκυόνη) maintained by the Hellenic Police, so as to access information on individual asylum seekers' files. Due to this, procedural steps such as vulnerability assessments of asylum seekers conducted by the Reception and Identification Service (RIS) are not immediately visible to the Asylum Service and the Appeals Authority, thereby posing an additional burden on applicants to receive copies of such evidence from the RIS with a view to producing them before the asylum authorities.
9. Moreover, the Greek administration largely relies on **outsourcing of responsibilities and functions related to asylum to different actors**, including European Union (EU) agencies, despite mandate concerns.<sup>11</sup> Whereas its officials operate in line with the internal regulations of the Asylum Service,<sup>12</sup> EASO continues to follow differentiated practices, insofar as its caseworkers use codes instead of names in the opinions they submit to the Asylum Service, in dereliction of Greek law.
10. Outsourcing is also carried out to United Nations (UN) bodies, **without necessarily putting in place the necessary safeguards to ensure coordination, oversight and accountability of the State.** An illustrative example may be drawn from a recent case concerning an asylum seeker on Lesbos for whom the European Court of Human Rights indicated interim measures to the Greek authorities to ensure "living conditions compatible with Article 3 of the Convention having regard to his state of health and to provide the applicant with adequate healthcare compatible with his state of health".<sup>13</sup> Following the order of the Court, the RIS, competent for the applicant's reception, stated that it had referred the applicant to the United Nations High Commissioner for Refugees (UNHCR) for his transfer to the mainland. The RIS stated that the "Service is not, however, in a position to know his transfer timeframe, as this clearly depends on UNHCR."<sup>14</sup> In another case concerning a Syrian single-parent family, whereas relevant international organisations were aware of the father's inability to care for his underage children due to an acute psychiatric condition, the asylum authorities treated the children as accompanied and did not conduct a best interests assessment.<sup>15</sup>
11. The latest iteration of such outsourcing concerns the delegation of the preparation of asylum decisions to registered legal practitioners appointed as "caseworker assistants" (βοηθοί χειριστές), starting as a pilot project on Lesbos, Chios and Samos. The relevant Ministerial Decision provides that caseworker assistants will be present

<sup>10</sup> Efsyn, 'Απειροί μετακλητοί σε θέσεις-κλειδιά του προσφυγικού', 19 March 2020, <https://bit.ly/2WA0mRW>.

<sup>11</sup> Relating to the role of the European Asylum Support Office (EASO) in the fast-track border procedure, the EU Ombudsman has noted that "EASO is being encouraged politically to act in a way which is, arguably, not in line with its existing statutory role": 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, para 33, <https://bit.ly/3g60sJ1>. See also Lilian Tsourdi, 'Holding the European Asylum Support Office Accountable for its role in Asylum Decision-Making: Mission Impossible?' (2020) 21:3 German Law Journal 506-531.

<sup>12</sup> Article 1(2) Ministry of Migration Policy Decision 3385/2018, Gov. Gazette B' 417/14.02.2018.

<sup>13</sup> ECtHR, *M.A. v. Greece*, App No 18179/20, Order of 5 May 2020.

<sup>14</sup> RIS, 'Αίτηση λήψης ασφαλιστικών μέτρων Μ.Α. κατά της Ελλάδας στο Ευρωπαϊκό Δικαστήριο Δικαιωμάτων του Ανθρώπου (Ε.Δ.Δ.Α.) – αριθμ. προσφ. 18197/20', 4145/7-5-2020, 11 May 2020.

<sup>15</sup> 6<sup>th</sup> IAC, Decision 5892/2020, 27 May 2020.

during interviews of asylum seekers and will prepare an opinion for the Asylum Service caseworker to assist them in reaching a decision.<sup>16</sup> Crucially, **selection criteria for caseworker assistants only involve knowledge of the English language and registration with the competent Bar Association,<sup>17</sup> without any requirement of experience or expertise in refugee and human rights law or any requirement to undergo training** prior to taking up the position.

## Asylum procedure and absence of an effective remedy against expulsion

### Registration and processing of asylum applications

12. The severe obstacles to access to the asylum procedure identified by the Court in M.S.S. and related case law<sup>18</sup> have not been resolved. The sole channel for an individual to register their intention to seek asylum on the territory involves a request for appointment via a Skype service available for specific hours a week according to available interpretation services. This practice raises crucial data protection and security considerations for individuals seeking protection. It is also persistently ineffective, as asylum seekers continue to face barriers to registration in urban areas. Individuals are **unable to access the Asylum Service via Skype despite several attempts to obtain an appointment.**<sup>19</sup> Moreover, the Asylum Service has recently launched a "self-registration" option to enable people to lodge their applications online.<sup>20</sup> However, this option is only available to persons whose intention to apply for international protection (βούληση) has already been officially registered and is recorded in the database. There are several cases in practice where such an intention is not officially stored, resulting in persons being unable to use the self-registration option.
13. RSA and Stiftung PRO ASYL note the reference to an average processing time of 315 days according to the Government observations to the Committee. However, many interviews on the mainland continue to be scheduled for over a year later, resulting in specific groups of asylum seekers being exposed to unduly lengthy procedures in Greece. For cases of Turkish nationals followed by RSA, for example, **the Asylum Service currently gives appointments for an interview no earlier than 2025.**
14. As regards the backlog of old cases, the Government observations refer to a number below 500 pending cases. RSA and Stiftung PRO ASYL recall the judgment in *B.A.C. v. Greece*,<sup>21</sup> where the Court found violations of Articles 8 and 13 ECHR on account of the failure of the State to establish an effective and accessible procedure to examine an asylum application in reasonable time. RSA and Stiftung PRO ASYL note that **several cases similar to B.A.C. have still not been concluded** at the time of writing,<sup>22</sup> and is **following cases pending since 2007.**
15. Finally, RSA and Stiftung PRO ASYL note with concern that **detailed official information on the functioning of the Greek asylum procedure is no longer made publicly available.** The Asylum Service has stopped publishing monthly statistical data from

<sup>16</sup> Article 4 Minister of Migration and Asylum Decision 12772/2020, Gov. Gazette B' 2682/01.07.2020.

<sup>17</sup> Article 1 Minister of Migration and Asylum Decision 12772/2020.

<sup>18</sup> ECtHR, *M.S.S. v. Belgium and Greece*, App No 30696/09, 21 January 2011, paras 300-302, 315, 318 and 320; *A.E.A. v. Greece*, App No 39094/12, 15 March 2018, paras 79-81.

<sup>19</sup> RSA is aware of several such cases affecting persons with clear protection needs e.g. large families of Palestinian asylum seekers in the Attica region.

<sup>20</sup> Asylum Service, *Electronic self-registration for asylum applicants*, 10 June 2020, <https://bit.ly/2OLHYRL>.

<sup>21</sup> ECtHR, *B.A.C. v. Greece*, App No 11981/15, 13 October 2016.

<sup>22</sup> These cases fall under the procedure set out in PD 61/1999.

the end of February 2020, without any justification.<sup>23</sup> The statistical reports of the Asylum Service provided detailed monthly figures on the number of applications registered by Regional Asylum Office and Autonomous Asylum Unit, the number and type of decisions taken (refugee status, subsidiary protection, rejection on the merits, inadmissibility by specific ground, withdrawal), recognition rates for key nationalities, as well as extensive information on the implementation of outgoing and incoming Dublin procedures. In addition, **transparency and publication obligations imposed by Greek law on administrative bodies such as the Appeals Authority remain 'dead letter'**. The Appeals Authority has never published quarterly activity reports pursuant to Article 4(3) L 4375/2016, in which it should include statistics on appeals lodged, the percentage of cases processed in written and oral procedures, processing times of appeals, recognition rates, applications for annulment lodged against Appeals Committee decisions, applications for legal aid and beneficiaries of legal aid.<sup>24</sup>

### Restrictions on the right to an effective remedy

16. Persisting deficiencies in practice, coupled with legislative reforms introduced over the past year, have had significant adverse impact on asylum seekers' enjoyment of their right to an effective remedy under Article 13 ECHR. The International Protection Act (IPA),<sup>25</sup> enacted in November 2019, has brought about a range of provisions restricting access to the appeal procedure.
17. First, asylum seekers **continue not to be informed of the first instance decision taken on their case in a language they understand**. They are thus unable to comprehend the reasons for the rejection of their claim by the Asylum Service.
18. Second, asylum seekers wishing to challenge before the Appeals Authority the rejection of their claim by the Asylum Service are required to submit within short deadlines<sup>26</sup> a **written appeal citing the contested decision and stating the full grounds on which it is challenged**.<sup>27</sup> Appeals which do not fulfil those conditions are dismissed as inadmissible. Although the assessment of admissibility of appeals falls under the responsibility of the Appeals Authority, Regional Asylum Offices such as that of Lesbos refused for a period of time in 2020 to receive appeals which did not fulfil the aforementioned conditions.<sup>28</sup>
19. Third, for asylum applications rejected in the accelerated procedure or dismissed as inadmissible (except those dismissed on "safe third country" grounds), domestic law provides that appeals no longer have automatic suspensive effect. Therefore, individuals do not automatically have a right to remain on Greek territory until the Appeals Authority decides on their appeal.<sup>29</sup> They are **required to submit a separate request to the Authority to rule on their right to remain during the appeal procedure**. However, **the derogation from the right to remain has been applied in practice to the fast-track border procedure on the Eastern Aegean islands** (Lesbos, Chios, Samos, Leros and Kos), including in "safe third country" cases where individuals have no

<sup>23</sup> RSA, 'Asylum statistics for 2020 should be published and unpacked', 15 July 2020, <https://bit.ly/3fKofEv>. The Ministry of Migration and Asylum publishes limited statistical information in the form of press releases.

<sup>24</sup> *Ibid.*

<sup>25</sup> L 4636/2019 "on international protection", Gov. Gazette A' 69/01.11.2019.

<sup>26</sup> Appeals have to be submitted within 10 days in the fast-track border procedure applicable on the Eastern Aegean islands (Lesbos, Chios, Samos, Leros and Kos): Article 90(3)(c) IPA.

<sup>27</sup> Article 93 IPA.

<sup>28</sup> HIAS Greece et al., *Report to the Ombudsman: Issues arising from the implementation of the IPA relating to the exercise of rights of applicants for international protection at the Regional Asylum Office of Lesbos*, 30 March 2020, 16-17, unpublished. A summary is available at: <https://bit.ly/2AslmSO>.

<sup>29</sup> Article 104(2) IPA.



access to legal aid. This practice contravenes EU law,<sup>30</sup> since the authorities are required to guarantee the automatic suspensive effect of appeals where applicants do not have access to legal assistance in border procedures.

20. Fourth, RSA and Stiftung PRO ASYL recall that, as a rule, the appeal procedure is a written procedure. Applicants are not provided with the opportunity to be heard by the Appeals Authority except for narrowly defined cases e.g. when doubts arise as to the adequacy of the first-instance interview.<sup>31</sup> **An oral hearing before the Appeals Authority is rarely granted in practice**, even where deficiencies are identified in first instance interviews or new crucial elements are produced by the applicant in the appeal.
21. The aforementioned restrictions on access to a remedy are compounded by **persisting inability on the part of the state to comply with its obligation to provide legal aid to asylum seekers in appeal procedures**. The framework establishing the operation of the Registry **does not include core aspects of legal aid provision such as adequate interpretation and physical contact and effective communication between lawyer and client**.<sup>32</sup> Legal aid is deemed to be fulfilled through the drafting of a written appeal and submissions, without effective legal representation of the individual applicant.
22. At the end of 2019, the Registry of lawyers managed by the Asylum Service for the purpose of providing legal aid in asylum appeals counted only 37 lawyers nationwide, of whom 17 were registered at the Regional Asylum Office of Attica.<sup>33</sup> The capacity of the Registry is far below the actual number of appeals dealt with by the Appeals Authority. As many as 15,357 appeals were lodged in 2019 alone,<sup>34</sup> and only 5,152 cases benefitted from state-funded legal aid.<sup>35</sup> In the five first months of this year, a total of 4,100 appeals were lodged and only 1,608 benefitted from state-funded legal aid.
23. Gaps in legal aid services remain particularly critical on the islands:<sup>36</sup> Chios and Kos only have a Registry lawyer each, Samos and Leros have no lawyer, while Lesvos has not had a Registry lawyer for a long period. The need for additional legal assistance capacity is particularly pressing for Lesvos, given that the island accounts for the majority of applications registered so far this year.<sup>37</sup> Although as of recently the Asylum Service has started referring asylum seekers on the islands to Registry lawyers on the mainland, legal aid capacity in no way suffices to cover actual needs and does not constitute effective legal representation. In addition to the shortage in legal assistance providers, asylum seekers residing in RIC on the islands have been subjected to rigid restrictions on movement, successively prolonged even after general COVID-19 measures were lifted nationwide,<sup>38</sup> while 150 € fines have been imposed on persons travelling to the city of Mytilene in an effort to obtain legal counsel to appeal negative decisions on their asylum claims.<sup>39</sup>

<sup>30</sup> Article 46(7) Asylum Procedures Directive, transposed by Article 104(3) IPA.

<sup>31</sup> Article 97(3) IPA. See also Administrative Court of Appeal of Athens, Decision 166/2020.

<sup>32</sup> The relevant Ministerial Decision foresees interpretation services which should not exceed two hours in total and does not provide for meetings in person: Article 1(5)-(6) Joint Ministerial Decision 3686/2020, Gov. Gazette B' 1009/24.03.2020.

<sup>33</sup> Asylum Information Database, *Country Report Greece, 2019 Update*, June 2020, 69.

<sup>34</sup> Greek Asylum Service, *Statistical data*, February 2020, <https://bit.ly/2XcUFJf>.

<sup>35</sup> Asylum Information Database, *Country Report Greece, 2019 Update*, June 2020, 69.

<sup>36</sup> Greek Council for Refugees & Oxfam, *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, <https://bit.ly/2Tp2avl>.

<sup>37</sup> Greek Asylum Service, *Statistical data*, February 2020, <https://bit.ly/2XcUFJf>.

<sup>38</sup> On the latest prolongation of restrictions, see Joint Ministerial Decision Δ1 α/Γ.Π.οικ 45681/2020, Gov. Gazette B' 2947/17.7.2020.

<sup>39</sup> Ethnos, 'Λέσβος: Πρόστιμα σε μετανάστες για άσκοπη μετακίνηση', 21 May 2020, <https://bit.ly/3hT2s8A>.



24. In addition, further restrictions to the effectiveness and quality of the appeal procedure have been introduced by the latest asylum reform of May 2020.<sup>40</sup> Following these amendments, **all appeals lodged by asylum seekers residing on the islands of Lesbos, Chios, Samos, Leros and Kos shall be examined by the Independent Appeals Committees (IAC) in single-judge formation.**<sup>41</sup> This measure amounts to arbitrary deprivation of a crucial procedural guarantee in the appeal process for a large part of the asylum-seeking population, without objective justification.<sup>42</sup>
25. **Up-to-date information on the appeal procedure is not made available by the Appeals Authority, despite an express obligation under domestic law** to publish quarterly activity reports indicating *inter alia* number of appeals examined orally and in writing, recognition rates of appeal decisions, average processing times, onward appeals, as well as applications for and decisions granting legal aid to appellants.<sup>43</sup> **No activity report has been published by the Appeals Authority to date.** RSA submitted a request for information to the Authority on 10 June 2020 on the steps taken to ensure compliance with the above provisions but has not received a reply to date.
26. Finally, the IPA amended anew the composition of the Independent Appeals Committees. Currently, all three members of the Committees processing appeals are administrative judges.<sup>44</sup> RSA and Stiftung PRO ASYL recall that **the same judicial officials sitting in the Administrative Courts, competent to review the legality of Appeals Committee decisions** in applications for annulment (*αίτηση ακύρωσης*),<sup>45</sup> **can form part of the Appeals Committees** which take the contested decisions. This institutional arrangement creates risks of conflict of interests where a particular judge called to assess the legality of an Appeals Committee decision has previously expressed their views on a similar case as an Appeals Committee member. It thus **falls short of the requisite guarantees of impartiality**<sup>46</sup> of the court before which an asylum seeker seeks remedy and thereby of the right to a fair trial pursuant to Article 6 ECHR.<sup>47</sup> Domestic courts make a very restrictive reading of the principle of impartiality, however. In a recent ruling concerning a request for exemption (*αίτηση εξαιρέσεως*) of two judges from an annulment procedure due to concerns about their impartiality, raised by their parallel exercise of duties as administrative judges and active Appeals Committee members,<sup>48</sup> the Administrative Court of Athens held that a suspicion of partiality apt to warrant for exemption must stem from the relations between the judge and a party to the proceedings and cannot be derived from a judge's previous positioning on the subject matter of the proceedings. The Court noted that the applicants had not established elements such as animosity or conflict between themselves and the judges so as to substantiate such a suspicion.<sup>49</sup>

#### Adequate reasoning of decisions

27. Despite the institutional reforms outlined above, **concerns as to the quality of the examination of asylum applications (conduct of interviews, assessment of claims, evaluation of country of origin information)** raised by the Court in *M.S.S.* and related

<sup>40</sup> L 4686/2020 "on improvement of migration legislation", Gov. Gazette A' 96/12.05.2020.

<sup>41</sup> Article 5(7)(g) L 4375/2016, as amended by Article 30(2) L 4686/2020.

<sup>42</sup> Note that an attempt to apply single-judge examination of appeals as a measure of general application in France was recently ruled unlawful by the Council of State: Conseil d'Etat, Decision 440717, 8 June 2020, para 12, <https://bit.ly/2AXwbwr>.

<sup>43</sup> Article 4(3) L 4375/2016, as amended by Article 86(2) L 4399/2016.

<sup>44</sup> Article 5(2) L 4375/2016, as amended by Article 116(2) IPA.

<sup>45</sup> Article 108 IPA.

<sup>46</sup> ECtHR, *Daktaras v. Lithuania*, App No 42095/98, 10 October 2000, para 30.

<sup>47</sup> See also Article 46(1) Asylum Procedures Directive.

<sup>48</sup> *Ibid*, referring to "court or tribunal".

<sup>49</sup> Administrative Court of Athens, Decision 362/2020, 17 July 2020, para 8.

case law concerning Article 3 **persist to date**.<sup>50</sup> Problems at first instance, coupled with the aforementioned obstacles to an effective remedy, result in exposing individuals to unfair and arbitrary denials of protection.

28. More specifically, the Court has recalled in its recent case law the duty of Contracting Parties to the ECHR wishing to dismiss an asylum claim without examining its merits to assess Article 3 ECHR risks attached to removal to another country in a thorough and comprehensive legal procedure, including an up-to-date *ex officio* assessment of the adequacy of the receiving country's asylum system.<sup>51</sup> However, RSA continues to observe deficiencies in the examination of Article 3 risks by Greek asylum authorities in the context of inadmissibility decisions taken based on the "safe third country" concept.
29. First, Greece continues to dismiss asylum applications of Syrian nationals as inadmissible on the basis of Turkey being a "safe third country" for them, **without having laid down rules in domestic legislation on the methodology to be followed by the authorities for the purpose of assessing the applicability of the concept in individual cases**. In the absence of such rules, the use of the "safe third country" concept contravenes the obligations set out by EU law in the Asylum Procedures Directive,<sup>52</sup> as interpreted by the Court of Justice of the European Union (CJEU).<sup>53</sup>
30. Second, **Greek asylum authorities do not adequately assess the safety of Turkey and risks of treatment contrary to Article 3 prior to dismissing an asylum claim**, as required by the Convention.<sup>54</sup> The Asylum Service continues to issue standardised inadmissibility decisions to Syrian nationals with quasi-identical contents and no assessment of asylum seekers' particular circumstances,<sup>55</sup> including gender, membership of ethnic minorities or origin from areas directly targeted by the Turkish State.
31. The second instance procedure does not guarantee an effective, full and *ex nunc* examination of cases, given that the overwhelming majority of Appeals Authority decisions uphold the inadmissibility decisions taken by the Asylum Service.<sup>56</sup> Appeal decisions reviewed by RSA in 2020 continue to cite diplomatic assurances provided by Turkish authorities in the form of letters to the European Commission, where Turkey states the possibility for Syrian nationals to gain access to the temporary protection regime upon return from Greece.<sup>57</sup> However, **the diplomatic assurances in question fall far short of the quality and reliability criteria set out by the case law of the Court**.<sup>58</sup> In particular, the Turkish authorities' letters: (i) date back to April 2016 and thereby no longer reflect Turkey's legal framework and practice; (ii) are general in nature rather

<sup>50</sup> Asylum Information Database, *Country Report Greece, 2019 Update*, June 2020, 58-59.

<sup>51</sup> ECtHR, *Ilias and Ahmed v. Hungary* [GC], App No 47287/15, 21 November 2019, paras 137-141.

<sup>52</sup> Article 38(2)(b) Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) [2013] OJ L180/60.

<sup>53</sup> CJEU, Case C-564/18 *LH*, 19 March 2020, para 48; Joined Cases C-924/19 and C-925/19 *FMS*, 14 May 2020, para 158.

<sup>54</sup> ECtHR, *Ilias and Ahmed v. Hungary* [GC], App No 47287/15, 21 November 2019, para 155.

<sup>55</sup> See e.g. Yiota Massouridou, Legal Opinion on the case law of the Greek Appeals Committees and Administrative Courts with regard to the application of the "safe third country" concept, 31 July 2019, <https://bit.ly/2Wz6mub>; Asylum Information Database, *Country Report Greece, 2019 Update*, June 2020, 128-129, <https://bit.ly/2CtK7Pb>.

<sup>56</sup> *Ibid.*

<sup>57</sup> See in particular Ambassador of Turkey to the European Union, Letter to the Director-General for Migration and Home Affairs of the European Commission, 12 April 2016, <https://bit.ly/37Qfz5Z>.

<sup>58</sup> ECtHR, *Othman (Abu Qatada) v. the United Kingdom*, App No 8139/09, 17 January 2012, para 189.

than specific; and (iii) compliance with the assurances therein is not verifiable through monitoring mechanisms.<sup>59</sup>

32. Risks of *refoulement* of Syrian refugees in Turkey have been documented by a series of recent, reliable reports from human rights organisations.<sup>60</sup> In several decisions seen by RSA, however, **the IAC refrain from taking into consideration up-to-date, reliable sources of information concerning risks** of inhuman or degrading treatment and *refoulement* facing individuals in Turkey,<sup>61</sup> in dereliction of Greece's obligations under Article 3 of the Convention.<sup>62</sup> Even where reliable reports on risks of non-compliance by Turkey with the principle of *non-refoulement* are cited in decisions, **IAC do not engage with available evidence in their legal analysis of the applicability of the safety criteria of the "safe third country" concept** and the risks of exposure of individuals to treatment contrary to Article 3.<sup>63</sup> In a number of decisions issued this year, the Appeals Committees cited the aforementioned diplomatic assurances and selected provisions of Turkish legislation as reliable evidence of compliance by Turkey with the principle of *non-refoulement*.<sup>64</sup>
33. Third, IAC decisions in cases represented by RSA in 2020 have dismissed alleged risks of *refoulement* on the ground that the evidence put forward by the appellants did not point to "structural problems" (*δομικού χαρακτήρα*),<sup>65</sup> to "systematic violations" (*συστηματικές παραβιάσεις*)<sup>66</sup> or to "mass *refoulement*" (*μαζικές επαναπροωθήσεις*) of Syrian refugees from Turkey.<sup>67</sup>
34. Finally, doubts as to the compatibility of Greece's assessment of the "safe third country" concept have been expressed by courts in other jurisdictions.<sup>68</sup> RSA and Stiftung PRO ASYL also recall that several cases,<sup>69</sup> pending before the Court, deal with deficiencies in the manner in which Greece assesses Article 3 risks in the application of the "safe third country" concept. The deficiencies identified in the above cases remain relevant to the assessment of the country's compliance with Article 3.

#### Assessment of risks in expulsion

35. The authorities' failure to assess risks of *refoulement* when taking expulsion decisions remains a systematic practice.<sup>70</sup> Since the launch of the EU-Turkey statement, **the**

<sup>59</sup> Note European Commission, *Turkey Report 2019*, SWD(2019) 220, 29 May 2019, 48: "the EU does not have access to the Turkish-Syrian border and is not monitoring returns to Syria". See also 47 relating to Turkey's legal framework: "Legislation in this area is partially aligned with the EU acquis."

<sup>60</sup> Refugees International, *Insecure future: Deportations and lack of legal work for refugees in Turkey*, September 2019, 10, <https://bit.ly/32HdEfT>; Amnesty International, *Sent to a war zone: Turkey's illegal deportations of Syrian refugees*, October 2019, 12-14, <https://bit.ly/2V4UdNb>; Asylum Information Database, *Country Report Turkey, 2019 Update*, April 2020, 17, 29-30, 95-96, 124, <https://bit.ly/2YkHelV>; Human Rights Watch, 'Turkey: Syrians Being Deported to Danger', 24 October 2019, <https://bit.ly/2SeTEzy>; The Guardian, 'It's not legal': UN stands by as Turkey deports vulnerable Syrians', 23 August 2019, <https://bit.ly/393e84c>; İnsan Hakları Derneği, *Sınırdışı Uygulamaları Ve Mültecilere Yönelik Hak İhlalleri Raporu*, November 2019, <https://bit.ly/35N11oa>.

<sup>61</sup> See e.g. 6<sup>th</sup> IAC, Decision 25449/2019, 20 January 2020; 6<sup>th</sup> IAC, Decision 2411/2019, 28 February 2020; 17<sup>th</sup> IAC, Decision 3576/2020, 10 March 2020, para 12; 13<sup>th</sup> IAC, Decision 2727/2020, 9 April 2020; 14<sup>th</sup> IAC, Decision 4334/2020, 9 April 2020.

<sup>62</sup> ECtHR, *Ilias and Ahmed v. Hungary* [GC], App No 47287/15, 21 November 2019, para 141.

<sup>63</sup> See e.g. 6<sup>th</sup> IAC, Decision 2411/2019, 28 February 2020, paras 11, 14 and 15; 13<sup>th</sup> IAC, Decision 2727/2020, 9 April 2020, para 19; 6<sup>th</sup> IAC, Decision 5892/2020, 27 May 2020, paras 12 and 15.

<sup>64</sup> 13<sup>th</sup> IAC, Decision 2727/2020, 9 April 2020, para 19; 16<sup>th</sup> IAC, Decision 19219/2019, 15 May 2020, para 16.

<sup>65</sup> 6<sup>th</sup> IAC, Decision 25449/2019, 20 January 2020, para 12; 6<sup>th</sup> IAC, Decision 2411/2019, 28 February 2020, para 15; 6<sup>th</sup> IAC, Decision 5892/2020, 27 May 2020, para 15.

<sup>66</sup> 14<sup>th</sup> IAC, Decision 2548/2020, 24 April 2020, 11.

<sup>67</sup> 13<sup>th</sup> IAC, Decision 6722/2020, 9 April 2020, 12.

<sup>68</sup> Administrative Court of Munich, Decision M11S19.50722, 17 July 2019.

<sup>69</sup> ECtHR, *J.B. v. Greece*, App No 54796/16, Communicated 18 May 2017; *Hampay v. Greece, Austria and Portugal*, App No 31373/17.

<sup>70</sup> See e.g. ECtHR, *S.D. v. Greece*, App No 53541/07, 11 June 2009, paras 78-80.

**overwhelming majority of persons arriving in Greece are immediately and automatically issued a standardised deportation order by the police upon entry**, without any assessment of their individual needs. This practice is followed despite the fact that those persons express their intention to seek international protection and that such an intention has been registered.<sup>71</sup> On the basis of a police circular,<sup>72</sup> a deportation order is issued and is then suspended upon the making of an asylum application, since it cannot be executed. The deportation order is executed by the police where the applicant does not comply with certain obligations e.g. violation of the geographical restriction on a particular island<sup>73</sup> or use of false documents.<sup>74</sup> In those cases, however, **the execution of the deportation order** – and subsequent detention, as discussed below – **does not involve an assessment of risks of refoulement**, despite the fact that the applicant is still in an asylum procedure.<sup>75</sup>

36. Moreover, on 2 March 2020, Greece issued an emergency decree (Πράξη Νομοθετικού Περιεχομένου) **suspending access to the asylum procedure for a one-month period**.<sup>76</sup> The suspension of access to the asylum procedure has been criticised *inter alia* by UNHCR, which has recalled that a state “cannot suspend the internationally recognized right to seek asylum and the principle of non-refoulement”.<sup>77</sup> During the period of effect of the decree, people entering the country and expressing the intention to seek international protection were subjected to **blanket detention and deportation orders to Turkey, without any individualised assessment or consideration of the non-refoulement principle**. It is worth highlighting that **the policy has also been applied to Turkish nationals fleeing Turkey on account of persecution**.<sup>78</sup> This policy amounts to a clear and severe infringement of Article 3 of the Convention.
37. Deportation orders issued during that period by the Lesvos Police Directorate in cases represented by RSA made no reference to the IPA, to the fact that the intention to lodge an asylum claim had been expressed, and were notified to the persons concerned in Greek with no interpreter present.<sup>79</sup> **Administrative remedies against expulsion decisions in such cases were ineffective**, given that the second-instance decision-making authority, the Northern Aegean Regional Police Directorate, **rejected all appeals in identical decisions without conducting individualised assessments or examining risks of refoulement**.<sup>80</sup>

## Living conditions of asylum seekers

### Accommodation

38. In its observations to the Committee, the Government mentions that recent legislation “sets the pathway for a more efficient restructuring of open accommodation structures and the increase of their capacity” and that “[f]urther action for better management and development of existing structures, as well as increase in capacity,

<sup>71</sup> Vasileios Papadopoulos, ‘Αντιρρήσεις κατά κράτησης αλλοδαπού’ (2020) 32 Διοικητική Δίκη 337-345, 337.

<sup>72</sup> Police Circular 1604/16/1195968, 18 June 2016.

<sup>73</sup> See e.g. Administrative Court of Athens, 867/2020, 16 July 2020, para 5.

<sup>74</sup> See e.g. Administrative Court of Piraeus, AP 414/2019, para 6.

<sup>75</sup> Vasileios Papadopoulos, ‘Αντιρρήσεις κατά κράτησης αλλοδαπού’ (2020) 32 Διοικητική Δίκη 337-345, 339.

<sup>76</sup> ECtHR, *Ilias and Ahmed v. Hungary* [GC], App No 47287/15, 21 November 2019, para 141.

<sup>77</sup> UNHCR, ‘UNHCR statement on the situation at the Turkey-EU border’, 2 March 2020, <https://bit.ly/37aDNYh>.

<sup>78</sup> Ombudsman, *Τετραμηνιαία δελτία: Ιανουάριος-Απρίλιος 2020*, 26, <https://bit.ly/2A4P4gQ>.

<sup>79</sup> For discussion, see RSA, *Rights denied during Greek asylum procedure suspension*, April 2020, 4, <https://bit.ly/37bDRa8>.

<sup>80</sup> *Ibid*, 6.

is constantly on the relevant authorities' agenda." These statements are **in direct contradiction with the declared commitment on the part of the Ministry of Migration and Asylum to sharply reduce accommodation capacity by abolishing 55 facilities by the end of 2020,<sup>81</sup> as well as to "abolish the use of apartments and hotels in cities for the accommodation of refugees".<sup>82</sup>**

39. RSA and Stiftung PRO ASYL stress that **asylum seekers in Greece cannot directly apply for accommodation before the Directorate-General for the Protection of Asylum Seekers (DGPAS)** of the Ministry of Migration and Asylum.<sup>83</sup> Referral is made by the Reception Identification Service (RIS), the Asylum Service, Migrant Integration Centres (Κέντρα Ένταξης Μεταναστών, KEM), other authorities or civil society organisations that are registered with the Ministry of Migration and Asylum.
40. Persistent deficiencies in the coordination of actors in the Greek reception system result in asylum seekers being deprived of the right to accommodation during their asylum procedure. Due to the inability of the RIS to adequately process persons arriving via North-Eastern Greece, **asylum seekers released from the RIC of Fylakio are not referred to a reception facility for accommodation.** Due to this, asylum seekers **remain as unofficial residents and reside in makeshift areas of mainland camps** such as Malakasa. These people live in rub halls or tents for several months under wholly substandard conditions.<sup>84</sup>
41. Furthermore, living conditions in RIC on the Eastern Aegean islands are consistently documented, including by Council of Europe bodies, as **critical and incompatible with human dignity.** The Greek authorities remain **unable to guarantee the safety of RIC residents *inter alia* against security incidents** and have not carried out effective investigations on multiple occasions of deaths resulting from criminal offences.<sup>85</sup>
42. Conditions are particularly dire for unaccompanied children, pregnant women, victims of torture, elderly persons and persons suffering from serious and often incurable medical conditions. In this regard, the **European Court of Human Rights has granted interim measures under Rule 39 of the Rules of Court in at least ten cases** concerning substandard conditions on the islands. RSA and Stiftung PRO ASYL wish to draw the attention of the Committee to recent interim measures indicated by the Court in a number of cases represented by RSA lawyers. **The Court has ordered the authorities to "guarantee for the applicants an accommodation with reception conditions which are compatible with Article 3 of the Convention and the applicants' health state"** on account of their specific needs e.g. medical condition, age.<sup>86</sup>
43. However, **the interim measures indicated by the Court have not been promptly complied with by the Greek authorities,** in breach of Article 34 of the Convention.<sup>87</sup> In the case of M.A.,<sup>88</sup> where the Court ordered on 5 May 2020 the immediate transfer of a victim of torture out of Moria, M.A. remained in the RIC until 10 June 2020 under inappropriate conditions and was then detained with a view to return to Turkey. The

<sup>81</sup> Nafteporiki, 'N. Μηταράκης: Μείωση των δομών από 93 σε 38 το 2020', 25 April 2020, <https://bit.ly/3fKxe27>.

<sup>82</sup> Ministry of Migration and Asylum, 'Δημιουργούμε 20.000 νέες θέσεις φιλοξενίας στην ενδοχώρα', 26 February 2020, <https://bit.ly/3fceylT>; 'Φρένο στις ροές - ασφάλεια στις δομές', 3 May 2020, <https://bit.ly/3c2XC5u>.

<sup>83</sup> Information provided by DGPAS, 29 June 2020.

<sup>84</sup> RSA, 'In this place, we have to help ourselves!', April 2020, <https://bit.ly/3dnuzcG>.

<sup>85</sup> For a recent example, see ERT, 'Νέα αιματηρή συμπλοκή στην Μόρια - Νεκρός από μαχαίρι 21χρονος Αφγανός', 27 July 2020, <https://bit.ly/3hGygfF>.

<sup>86</sup> ECtHR, *E.I. and others v. Greece*, App No 16080/20, Order of 16 April 2020; *M.A. v. Greece*, App No 18179/20, Order of 5 May 2020. See further RSA, 'Evacuation of overcrowded island camps a legal imperative', 21 April 2020, <https://bit.ly/3h4XsgS>.

<sup>87</sup> ECtHR, *Mamatkulov and Askarov v. Turkey* [GC], App Nos 46827/99 and 46951/99, paras 128-129.

<sup>88</sup> ECtHR, *M.A. v. Greece*, App No 18179/20.



authorities have failed to provide the applicant with accommodation suitable to his vulnerable condition.

44. Under the COVID-19 pandemic, restrictions on movement have been imposed on persons residing in the RIC of the Eastern Aegean islands and selected mainland camps. **These restrictions have been successively prolonged and remain in force**, despite the nationwide lifting of general COVID-19 measures in early May 2020.<sup>89</sup> This amounts to a **discriminatory restriction on asylum seekers' freedom of movement**, "resulting in a deterioration of their medical and mental health".<sup>90</sup>

#### Health care

45. Obstacles to accessing the asylum procedure, as outlined above, have a direct impact on the ability of asylum seekers to enjoy reception conditions such as health care in practice.
46. Since July 2019, asylum seekers are no longer eligible for a Social Security Number (Αριθμός Μητρώου Κοινωνικής Ασφάλισης, AMKA) before a positive decision is taken on their asylum application.<sup>91</sup> They can only apply for AMKA after obtaining their status and residence permit. Under the law currently in force, throughout their time as asylum seekers, people can only access health care through a Foreigner's Temporary Insurance and Health Coverage Number (Προσωρινός Αριθμός Ασφάλισης και Υγειονομικής Περιθαλψης Αλλοδαπού, ΠΑΑΥΠΑ) which they should obtain upon the lodging of their asylum application with the Asylum Service.<sup>92</sup> **The delivery of ΠΑΑΥΠΑ numbers by the Asylum Service has been marred by regulatory deficiencies since the introduction of the measure**, however. Secondary legislation detailing the rules governing the issuance of ΠΑΑΥΠΑ was only adopted at the end of January 2020,<sup>93</sup> while its actual pilot implementation only started in April 2020 on the islands.<sup>94</sup> Whereas new arrivals obtain ΠΑΑΥΠΑ upon registration, persons arriving in Greece from July 2019 until very recently were not always issued such a number when renewing their asylum seeker cards and have effectively been excluded from access to health care.
47. Furthermore, despite several years of dealing with higher levels of arrivals, the State has not taken steps to increase the provision of interpretation services in hospitals.<sup>95</sup> **Hospitals in the Attica region continue to lack available interpretation services to communicate with patients.**<sup>96</sup> The National Public Health Organisation (Εθνικός Οργανισμός Δημόσιας Υγείας, EODY) was unable to share statistics on interpreters and staff deployed in hospitals under the "PHILOS – Emergency health response to refugee crisis" programme,<sup>97</sup> though it stated that all languages covered in leaflets provided to individuals are covered by interpreters.<sup>98</sup>

<sup>89</sup> On the latest prolongation of restrictions, see Joint Ministerial Decision Δ1 α/Γ.Π.οικ 45681/2020, Gov. Gazette B' 2947/17.7.2020.

<sup>90</sup> Médecins Sans Frontières, 'Greek government must end lockdown for locked up people on Greek islands', 16 July 2020, <https://bit.ly/2CN6S0W>.

<sup>91</sup> Ministry of Labour and Social Insurance, Circular Φ.80320/οικ.31355/Δ18.2084 "on the issuance of AMKA to foreign nationals", 11 July 2019, <https://bit.ly/2Ldd5ny>.

<sup>92</sup> Article 55(2) IPA.

<sup>93</sup> Joint Ministerial Decision 717/2020, Gov. Gazette B' 199/31.1.2020.

<sup>94</sup> The Ministry of Migration and Asylum announced the start of implementation of the policy on 1 April 2020: Ministry of Migration and Asylum, 'Απόδοση Προσωρινού Αριθμού Ασφάλισης και Υγειονομικής Περιθαλψης Αλλοδαπού (Π.Α.Α.Υ.Π.Α.)', 1 April 2020, <https://bit.ly/2xltmDG>.

<sup>95</sup> RSA & PRO ASYL, *Structural failure: Why Greece's reception system failed to provide sustainable solutions*, June 2019, <https://bit.ly/2X367rA>.

<sup>96</sup> See e.g. RSA, "In this place, we have to help ourselves!", April 2020, 11, <https://bit.ly/2X2UGAA>.

<sup>97</sup> For discussion, see RSA & PRO ASYL, *Structural failure: Why Greece's reception system failed to provide sustainable solutions*, June 2019, <https://bit.ly/3csBuln>.

<sup>98</sup> RSA & PRO ASYL, *Third party intervention in Darwesh v. Greece*, 4 June 2020, para 20, <https://bit.ly/2CIsZM9>.



48. Deficiencies in the provision of health care have a dire impact on particularly vulnerable individuals. **Victims of torture do not have access to certification and rehabilitation in line with the Istanbul Protocol.** According to the IPA, victims of torture are certified by a medical opinion from a public hospital or other public health authorities, including forensic authorities (ιατροδικαστικές υπηρεσίες).<sup>99</sup> The competent public authorities do not carry out certification in practice, however. In a recent case followed by RSA on Lesbos, the applicant approached the island's public hospital, General Hospital of Mytilene "Vostanio", and was referred to the forensic authority for the purpose of undergoing examination for the purpose of certification.<sup>100</sup> The Northern Aegean Forensic Authority explained in turn that it solely conducts examinations for injuries upon order from police authorities or the prosecutor,<sup>101</sup> due to which the person was never certified as a victim of torture. Similar to this, the General Hospital of Chios "Skylitseo" has no specialised service for the certification of victims of torture.<sup>102</sup> Beyond obstacles to certification, **the State does not run any certification or rehabilitation programme for victims of torture across the country.**

### Reception and protection of unaccompanied minors

49. The dedicated legal framework on guardianship of unaccompanied children, L 4554/2018, commended by the Committee of Ministers in its supervision of the M.S.S. and *Rahimi* groups of cases, has still not been implemented to date. Unaccompanied children applying for asylum in Greece are still not appointed a guardian by the authorities and remain under nominal guardianship of the territorially competent Public Prosecutor for prolonged periods. In one case represented by RSA, two unaccompanied children confined in Malakasa **remained without effective guardianship despite specific questions to the authorities from the Strasbourg Court as to when a guardian would be appointed to them.**<sup>103</sup>

50. Under the above circumstances, children are **legally unable to request and obtain legal representation, and to be heard before authorities and courts.** This deprives them of the ability to exercise their rights in Greece, i.e. asylum and social rights, and potential rights to family reunification procedures pending in other states.

51. **Persisting shortages** in suitable accommodation places for unaccompanied asylum-seeking children continue to **expose many unaccompanied children to destitution and homelessness**, in contravention of Greece's duty to ensure reception conditions guaranteeing an adequate standard of living, to act in line with their best interests and to safeguard them from conditions contrary to Article 3. At the end of April 2020, there were 989 children in insecure housing conditions according to EKKA.<sup>104</sup> RSA has supported an unaccompanied asylum-seeking child in Patra who was forced to sleep rough in the streets and in abandoned buildings amid the COVID-19 pandemic, despite having informed the Public Prosecutor of the child's urgent need for housing.<sup>105</sup>

52. In addition, the right to education is not guaranteed in practice. The government has adopted secondary legislation to set up "Refugee Children Education Facilities"

<sup>99</sup> Article 61(1) IPA. See also Administrative Court of Appeal of Piraeus, Decision 20/2019.

<sup>100</sup> Information provided by the General Hospital of Mytilene, No 9170, 22 June 2020.

<sup>101</sup> Information provided by the Northern Aegean Forensic Authority, No 187, 6 July 2020.

<sup>102</sup> Information provided by the General Hospital of Chios, No 3257, 5 March 2020.

<sup>103</sup> *R.H. & R.A. v. Greece*, App No 15463/20. See further RSA, 'Two children transferred out of Malakasa, protection still denied to many', 11 May 2020, <https://bit.ly/3dgXX4k>.

<sup>104</sup> EKKA, *Situation update: Unaccompanied children in Greece*, 30 April 2020, <https://bit.ly/3hQjB2L>.

<sup>105</sup> ECtHR, *H.H. v. Greece*, App No 17152/20.

(Δομές Υποδοχής για την Εκπαίδευση των Προσφυγοπαίδων, DYEP) in all reception facilities on the islands and the mainland, as part of an afternoon preparatory classes programme for the inclusion of children up to the age of 15 in the education system, funded by the Asylum, Migration and Integration Fund (AMIF).<sup>106</sup> However, **children on the islands do not have access to schooling on the islands**<sup>107</sup> and no data are available on the implementation of the programme.

53. Moreover, **arbitrary detention of unaccompanied children due to lack of available accommodation places (“protective custody”) persists**, with 276 children detained on that basis at the end of April 2020.<sup>108</sup> This practice continues despite consistent condemnation from the Court,<sup>109</sup> including recent orders of interim measures to immediately release children from detention conditions contrary to Article 3.<sup>110</sup> In one case represented by RSA, two unaccompanied children were confined in unsafe conditions for over two months and their transfer to an accommodation place was only secured following action before the Strasbourg Court.<sup>111</sup>
54. More broadly, the authorities **fail to conduct best interests assessments** regarding unaccompanied children, whether in asylum, detention or return procedures.

### Immigration detention

55. RSA and Stiftung PRO ASYL note with particular concern a **multidimensional expansion of the legal boundaries of immigration and asylum detention as a result of recent legislative amendments**. In short, the IPA renders more asylum seekers detainable, for longer periods, and with less procedural guarantees. First, it allows for the detention of asylum seekers who have applied for asylum at liberty.<sup>112</sup> Second, it extends the maximum duration of detention to 36 months. Third, it no longer requires a binding recommendation (εισήγηση) of the Asylum Service prior to the issuance of detention orders.<sup>113</sup> Fourth, initial asylum detention orders are no longer reviewable *ex officio* by the Administrative Court.
56. Furthermore, **the law currently in force states that persons subject to return proceedings are detained, as a rule**.<sup>114</sup> Accordingly, Greek legislation is incompatible with EU law,<sup>115</sup> since it no longer formulates pre-removal detention as a measure of last resort, to be ordered only when necessary and proportionate. The law also construes **pre-removal detention as the default step following the rejection of an asylum application at second instance**.<sup>116</sup>

<sup>106</sup> Joint Ministerial Decision 147357/Δ1/2019, Gov. Gazette B' 3646/1.10.2019.

<sup>107</sup> RSA, 'Moria nightmare', 24 January 2020, <https://bit.ly/2CXdryj>; 'Refugees trapped on Samos', 17 December 2019, <https://bit.ly/39xof8o>; 'Refugees trapped on Kos', 31 October 2019, <https://bit.ly/2EroEaM>.

<sup>108</sup> EKKA, *Situation update: Unaccompanied children in Greece*, 30 April 2020.

<sup>109</sup> ECtHR, *E.I. and others v. Greece*, App No 16080/20, Order of 16 April 2020; *M.A. v. Greece*, App No 18179/20, Order of 5 May 2020. See further RSA, 'Evacuation of overcrowded island camps a legal imperative', 21 April 2020, <https://bit.ly/3h4XsgS>.

<sup>110</sup> ECtHR, *R.A. and M.A. v. Greece*, App No 56843/19, Order of 4 November 2019. See further RSA, 'European Court of Human Rights asks Greece to transfer two unaccompanied boys detained in police station to suitable shelter', 6 November 2019, <https://bit.ly/2Yjxgri>.

<sup>111</sup> *R.H. & R.A. v. Greece*, App No 15463/20. See further RSA, 'Two children transferred out of Malakasa, protection still denied to many', 11 May 2020, <https://bit.ly/3dgXX4k>.

<sup>112</sup> Article 46(2) IPA.

<sup>113</sup> Article 46(4) IPA.

<sup>114</sup> Article 30(1) L 3907/2011, as amended by Article 51 L 4686/2020.

<sup>115</sup> Article 15 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 [2008] OJ L348/98.

<sup>116</sup> Article 92(4) IPA, inserted by Article 20(2) L 4686/2020.

57. In practice, Greece applies deprivation of liberty in an arbitrary and systematic manner. Detention for immigration purposes is increasingly used on the Eastern Aegean islands. In the context of the aforementioned suspension of access to the asylum procedure throughout March 2020, **all new arrivals in the country were subjected to blanket detention for the purpose of removal.** Detention orders disregarded the fact that persons had sought international protection and that there was no reasonable prospect of their removal to Turkey due to an indefinite suspension of readmission procedures in light of the COVID-19 pandemic. The police orders also failed to establish the exceptional grounds required under national law for the imposition of detention and lacked any individualised assessment. Deportation was even ordered vis-à-vis unaccompanied children and pregnant women who are expressly protected from removal according to Greek law.<sup>117</sup>

#### Facilities and conditions of detention

58. Immigration detention continues to be implemented in police stations,<sup>118</sup> where conditions have been consistently established as contrary to Article 3 ECHR. Even in some pre-removal detention centres, existing infrastructure does not sufficiently protect individuals from extreme weather conditions e.g. heat, cold and does not guarantee them unhindered access to electricity and water. Persons with particular vulnerabilities such as victims of torture or individuals suffering from psychological conditions do not have effective access to health care in detention.

59. RSA and Stiftung PRO ASYL also draw the attention of the Committee to a **proliferation of detention of newly arrived persons in unofficial sites** over the past year. Upon their apprehension and detention by the Hellenic Police or Coast Guard in the Evros region, new arrivals are often held in incommunicado detention in unofficial facilities as they are not allowed to call their lawyers or family to inform them about their detention or to use their mobile phones to do so. In one case followed by RSA, a four-member Afghan family were arrested with other asylum seekers and migrants by the Hellenic Coast Guard off the port of Alexandroupolis on 5 September 2019. Following the family's apprehension, the Coast Guard confiscated their mobile phones. The family was detained in a building near the Coast Guard Office until 11 September 2019 without access to a phone and thus with no way to contact their family members or seek legal assistance. RSA was also informed that, **when the capacity in the RIC of Fylakio is full, refugees and migrants apprehended by the Coast Guard of Alexandroupolis remain detained there for as long as required until their transfer to the RIC.**

60. In a similar vein, during the period of effect of the suspension of access to the asylum procedure in March 2020, new arrivals were initially **held under inhuman conditions in various unofficial sites on the Eastern Aegean islands.** These included approximately 100 persons detained next to the Coast Guard premises on Samos and 250 around the Coast Guard station on Leros, and 450 persons initially held in a fenced area of the Port of Mytilene prior to being detained in the Rhodes Hellenic Navy vessel.<sup>119</sup> They were subsequently transferred to two newly established detention places on the mainland, Serres and Malakasa. Conditions in both facilities have been denounced by local police unions as a "ticking bomb", with a complete lack of health and safety measures against the backdrop of the COVID-19 pandemic.<sup>120</sup>

<sup>117</sup> RSA, *Rights denied during Greek asylum procedure suspension*, April 2020, 3-4. See also *R.H. & R.A. v. Greece*, App No 15463/20.

<sup>118</sup> See e.g. ECtHR, *J.B. v. Greece*, App No 54796/16, Communicated 18 May 2017; *M.D. v. Greece*, App No 30275/17, Strike Out 20 February 2018.

<sup>119</sup> RSA, *Rights denied during Greek asylum procedure suspension*, April 2020, 3-4, 3.

<sup>120</sup> *Ibid*, 5.

61. Furthermore, persons arriving on Lesbos in the aftermath of the COVID-19 pandemic outbreak have been placed under restriction of freedom of movement in specifically designated areas of the island countryside such as Megala Therma, offering no shelter from extreme weather conditions.<sup>121</sup> These persons had no contact with the outside world, except for restricted access to UNHCR and volunteers.

#### Judicial review of detention

62. RSA and Stiftung PRO ASYL wish to draw the attention of the Committee to serious gaps in the accessibility and effectiveness of the “objections against detention” (αντιρρήσεις κατά κράτησης) remedy available to detained persons before the Administrative Court.<sup>122</sup> Individuals are **not informed of the reasons for their deportation and detention in a language they understand and do not benefit from legal aid** to challenge their deprivation of liberty.<sup>123</sup> Legal assistance is offered to a small number of detainees by civil society organisations operating on the islands, which currently face an increasingly restrictive environment affecting their work.<sup>124</sup>

63. The lack of effective judicial review of the legality of detention orders is starkly illustrated in the cases of persons arbitrarily detained with a view to removal, despite their asylum seeker status and corollary right to remain on Greek territory. Administrative courts have **upheld detention orders imposed on asylum seekers for reasons such as the violation of a geographical restriction or the use of false documents**, despite there being no such grounds for depriving asylum seekers of their liberty in domestic legislation.<sup>125</sup>

64. In a similar vein, in the context of review of detention during the period of effect of the March 2020 suspension of access to the asylum procedure, **domestic case law made a highly objectionable interpretation of the legal status of the decree and its effect on Greece’s obligations to guarantee access to asylum under EU and international law.**<sup>126</sup> In cases represented by RSA, the Administrative Court of Athens **failed to assess the legality of detention and to examine the compliance of the authorities’ decisions with national and European law.** First, the Court did not examine whether the deprivation of liberty of the applicants satisfies the criteria and conditions set by national law. It erroneously failed to engage with the applicants’ status as “asylum seekers” and thereby examined the lawfulness of the detention orders solely through the prism of return legislation, despite acknowledging that they had expressed the intention to seek international protection; an act triggering the applicability of asylum provisions, as stated above. Second, it did not engage with risks of refoulement contrary to the Refugee Convention and the ECHR raised by the applicants. Third, the Court made no assessment of clear obstacles to a reasonable prospect of return to Turkey, not least due to the constraints posed by the COVID-19 pandemic,<sup>127</sup> and disregarded evidence put forward by the applicants to that effect.

<sup>121</sup> ERT, ‘Θετικός στον κορονοϊό μετανάστης από τη δομή καραντίνας στα Μεγάλα Θέρμα’, 15 June 2020, <https://bit.ly/3ggPXC5>; Skai, ‘Λέσβος: Δύο κρούσματα κορωνοϊού στην πρόχειρη δομή - «καραντίνα» στα Μεγάλα Θέρμα’ 12 May 2020, <https://bit.ly/30VxkO4>.

<sup>122</sup> For a recent commentary, see Vasileios Papadopoulos, ‘Αντιρρήσεις κατά κράτησης αλλοδαπού’ (2020) 32 Διοικητική Δίκη 337-345.

<sup>123</sup> This is contrary to Article 13(4) of the Return Directive and raises questions of compliance with Articles 3 and 13 ECHR.

<sup>124</sup> Expert Council on NGO Law, *Opinion on the compatibility with European standards of recent and planned amendments to the Greek legislation on NGO registration*, CONF/EXP(2020)4, 2 July 2020, <https://bit.ly/332YIBV>; RSA, *Risk of repression: New rules on civil society supporting refugees and migrants in Greece*, May 2020, <https://bit.ly/2EovGgu>.

<sup>125</sup> Administrative Court of Athens, Decision 867/2020, 16 July 2020; Administrative Court of Piraeus, Decision AP 414/2019.

<sup>126</sup> RSA, *Rights denied during Greek asylum procedure suspension*, April 2020, 6. See Administrative Court of Athens, Decisions 358/2020, 359/2020 and 360/2020, 7 April 2020.

<sup>127</sup> See UNHCR, ‘UNHCR stresses urgent need for States to end unlawful detention of refugees and asylum-seekers, amidst COVID-19 pandemic’, 24 July 2020, <https://bit.ly/2OZlbiV>.

It thus refrained from observing that the continuation of the applicants' deprivation of liberty did not serve the purpose for which it had been imposed, and refrained from examining its necessity and proportionality. Fourth, it wrongly relied *inter alia* on lack of documentation to establish a risk of absconding, since in some cases the applicants had presented valid identity documents to the authorities. Finally, it entirely disregarded certain applicants' acute vulnerability due to conditions such as 8.5 months' pregnancy, in dereliction of express prohibitions on expelling pregnant women under domestic legislation. Crucially, in doing so the Court ran counter to the reasoning of the Council of State, which granted an interim order (*προσωρινή διαταγή*) to suspend deportation in the case of two mothers facing removal pursuant to the Decree, on the basis of their vulnerability.<sup>128</sup>

65. As regards the review of detention conditions in the light of the COVID-19 pandemic, administrative courts have **dismissed alleged risks of exposure to inappropriate detention conditions and of contracting COVID-19 in detention** as unsubstantiated,<sup>129</sup> without any assessment whatsoever of the conditions prevailing in pre-removal centres and their preparedness to prevent the spread of the COVID-19 pandemic.

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<sup>128</sup> RSA, *Rights denied during Greek asylum procedure suspension*, April 2020, 7.

<sup>129</sup> Administrative Court of Athens, Decisions 358/2020, 359/2020 and 360/2020, 7 April 2020, para 4; Decision 867/2020, 16 July 2020, para 5.



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