**EUROPEAN COMMITTEE OF SOCIAL RIGHTS**
**COMITE EUROPEEN DES DROITS SOCIAUX**

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**Case Document No. 5**

**International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece**
Complaint No. 173/2018

# OBSERVATIONS BY THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

**Registered at the Secretariat on 9 August 2019**

**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**

## 1. Introduction*[1]

1.1. UNHCR has been entrusted by the United Nations General Assembly ('UNGA') with the mandate to provide international protection to refugees and together with governments seek solutions for them.[2] UNHCR delivers its international protection mandate, *inter alia*, by supervising the application of international conventions for the protection of refugees.[3] By letter of 18 June 2019, the President of the European Committee of Social Rights ("the ECSR") invited UNHCR to submit written observations in this case. UNHCR welcomes this opportunity as the present case raises a number of issues regarding children seeking international protection in Greece.

1.2. In this submission, UNHCR addresses the domestic legislative framework and practice in Greece regarding reception conditions for children seeking international protection and the guardianship system for unaccompanied and separated children (Part 2) and provides UNHCR's interpretation of the relevant principles of international refugee and human rights law governing such (Part 3).

## 2. Legislative framework and practice in Greece regarding reception conditions for children seeking protection and the guardianship system

### *2.1. The reception and accommodation of unaccompanied children seeking international protection*

2.1.1 According to UNHCR Greece estimates, as of 30 June 2019, among the 33,500 refugee and migrant children in Greece (45% girls and 55% boys)[4], 3,868 are unaccompanied or separated children (6% girls, 94% boys) of which 7% are under 14 years and 255 reported as separated.[5] The present section focuses on the reception and accommodation of unaccompanied children (UAC) in Greece.[6]

### *2.2. Legislative and institutional framework*

2.2.1. Reception conditions of asylum-seekers in Greece (including children) were regulated by Presidential Decree 220/2007, which transposed the Reception Conditions Directive (2003/9/EC). Presidential Decree 220/2007 was repealed almost in its totality after the adoption of Law 4540/2018

* This submission does not constitute a waiver, express or implied, of any privilege or immunity which UNHCR and its staff enjoy under applicable international legal instruments and recognized principles of international law. UN General Assembly, *Convention on the Privileges and Immunities of the United Nations*, 13 February 1946, http://www.refworld.org/docid/3ae6b3902.html.

[2] UNGA, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), Chapter I para. 1: http://www.unhcr.org/refworld/docid/3ae6b3628.html.

[3] *Ibid.,* Chapter II para. 8(a).

[4] UNHCR, Greece estimates: https://www.myqnapcloud.com/smartshare/6053g6ll4l6p709v66w18aaz_65UdNzj.

[5] "EKKA Dashboard for UAC in Greece", 30 June 2019: http://www.ekka.org.gr/images/EKKA_Dashboard_30-6-2019.pdf.

[6] For a general description of the reception and accommodation conditions of accompanied children with their families, please see UNHCR's recommendations to the Committee of Ministers of the Council of Europe for the supervision of 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, 1348th meeting: https://www.refworld.org/docid/5cffceb04.html.

*inter alia* transposing Directive 33/2013/EU (RCD Recast) and the adoption of Law 4554/2018 on Guardianship. Law 4540/2018 provides for reception conditions for applicants of international protection, including freedom of movement of all applicants as well as the possibility to restrict movement (Art. 7), detention of categories of vulnerable persons - including minors - (Art. 10), education for minors (Art. 13), material reception conditions and modalities for reduction or withdrawal of reception conditions (Art. 17 et seq.).

2.2.2. Art. 21 of L. 4540/2018 provides for special guarantees for children, including the assessment of their best interest, access to specialized care and access to leisure activities; while Art. 22 provides for guarantees for unaccompanied children, including immediate notification to competent authorities in case an unaccompanied child is identified, assignment of care of the child, representation, family tracing, placement with a foster family, special rules on accommodation, the possibility to be accommodated in 'Supported Independent Living' (SIL) modalities and regarding necessary training and experience of persons dealing with children. Law 4375/2016 regulates the first-line reception and referral of UAC upon arrival in Greece by the "Reception and Identification Service" (RIS), which is responsible for carrying out reception and identification procedures in six "Reception and Identification Centers" (RICs). The reception and identification procedures comprise of information provision, identification and registration, medical and psychosocial screening and referral to further administrative treatment and special institutions.

2.2.3. During the years 2015-2017, responsibilities for UAC were shared across various Ministries: the Ministry of Migration Policy (first and second line reception for UAC, asylum procedures, family reunion/Dublin III, relocation), the Ministry of Labour and Social Solidarity (protection of children, coordination of referrals of UAC to shelters) and the Ministry of Justice (temporary guardianship of UAC through public prosecutors for minors). In 2018, the new laws on reception conditions for asylum-seekers,[7] on guardianship[8] and on foster care[9] significantly clarified the ministerial responsibilities related to child protection with the Ministry of Labor and Social Solidarity ascribed the lead responsibility for the protection of UAC including reception, guardianship and the coordination and monitoring of UAC care.

2.2.4. Within the Ministry of Labor and Social Solidarity, the Department for the Protection of Unaccompanied Children and the National Centre for Social Solidarity (hereafter "EKKA"), is responsible for the referral of UAC to care arrangements, guardianship and quality assurance. Since 22 August 2018, EKKA has taken over all referrals of UAC from RICs, police stations, Safe Zones in open temporary accommodation centres, hotels run by the International Organisation for Migration (IOM), UAC shelters, SIL projects and mainland sites,[10] as well as homeless children. With the gradual assignment of the overall competency of referral to one Agency (EKKA), a more comprehensive referral system is beginning to be established, which will further assist the placement of UAC in the most appropriate care arrangements per their needs. Since 2018, UNHCR has been reinforcing EKKA's capacity through the secondment of social workers in order to effectively handle the referral and placement of UAC into care arrangements.

### *2.3. Practice*

2.3.1. Prior to 2015, the State capacity for the reception and care of UAC was very limited compared to the numbers of UAC arriving in the country and in need of protection, with less than 500 places available in approximately 15 shelters. Following the increase in arrivals in 2015, a significant, albeit, short-term investment of humanitarian funding, resources and expertise focused on the protection of children in Greece with more actors becoming operational in child protection along with widely differing standards and approaches across the sector and serious challenges in coordination. While many interventions were characterized by emergency humanitarian responses and short-term solutions, opportunities were also

[7] L.4540/2018, transposing Directive 33/2013/EU.
[8] L.4554/2018.
[9] L.4538/2018.
[10] Sites in Greece are open camp-like facilities. There are currently approximate 26 sites on the mainland either run by the state i.e. Reception and Identification Service (RIS), or run by affiliated to RIS international and non – governmental organisations.

created for improving child protection systems through long-term interventions, with positive developments in the elaboration of the legal framework of guardianship. The shortage of reception capacity for UAC, coupled with the lack of established and harmonized protection standards in the existing shelter facilities and the prevailing reliance on interim and temporary care options such as "Safe Zones"[11] in the RICs, Safe Zones in open accommodation sites in the mainland and hotels continue to fall short of relevant international and European standards and prevent a holistic response to the protection needs of UAC in Greece.

2.3.2. Currently, only 26% UAC are in long term care (i.e. NGO-run shelters or SIL projects), while 25% reside in interim/temporary accommodation such as the Safe Zones in open temporary accommodation centres or IOM-run hotels on the mainland. The remaining children are either in the RICs on the islands (18%) or in "protective custody" in police detention facilities (4%). A significant number of UAC (27%) are homeless or living in informal/insecure housing such as in apartments with others, in squats or move frequently between different types of accommodation.

### *2.4. UAC in the RICs: Living conditions and treatment*

2.4.1. The situation for UAC in the RICs varies. The accommodation conditions in the RICs are largely sub-standard due to shortcomings in available services, which are further exacerbated with the increase of new arrivals that results in the reception capacity on the island and the RICs being surpassed. Overcrowding and very poor material conditions (Water, Sanitation & Hygiene - WASH, shelter) as well as critical gaps in the provision of medical and psychosocial support services leave children, in particular UAC, exposed to high safety and protection risks.[12] Despite the establishment of Safe Zones by IOM in some of the RICs (Lesvos and Chios) and designated areas for UAC, the needs exceed the available services, in particular at times of increased arrivals.

2.4.2. As of 30 June 2019, there were 765 UAC in the RICs, 625 of them in the RICs on the islands[13] and 140 UAC in the Fylakio RIC at the Evros land border. The official capacity of the Safe Zones in the RICs according to IOM is 70 places on Chios and 65 on Lesvos.[14] There are nine transit UAC shelters operated on the islands by NGOs, providing residential care arrangements for UAC pending their transfer to a shelter on the mainland.[15] Depending on the number of UAC and the processing capacity, the majority of UAC in the RICs continues to reside together with adults in inappropriate and at times makeshift shelters. UAC may stay in the RICs for up to one year and on Samos they may stay for several months in the surrounding area outside the RIC without any provision of security or specialized services.

2.4.3. Transfers from the RICs to shelters for UAC are usually delayed due to a number of factors. In accordance with L.4375/2016, once a newly arriving UAC is identified, a referral to EKKA for placement is made. The identification of an UAC, and consequently its referral to EKKA is delayed due to serious delays in the medical and psychosocial assessment (currently covered by EODY[16]) as part of the reception and identification procedures; the said delays are due to the limited capacity of EODY staff and serious delays in the EODY recruitment process.[17] Once the identification is completed, the referral is delayed further either due to the lack of coordination between the responsible authorities (RIC and

[11] Safe Zones for UAC within open accommodation sites were proposed to be established by the Child Protection sub Working Group in 2016, in cooperation with the Ministry of Migration Policy (MoMP) and the Ministry of Labour, Social Insurance and Social Solidarity (MoL) after a thorough assessment of UAC needs and support networks as an interim form of temporary care for UAC, to address their urgent safety and protection needs through their rapid transfer from detention/protective custody and the RICs. See paragraph 2.5.5. below for further details.

[12] Report to the Greek Government by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 19 April 2018, CPT/Inf (2019) 4: https://rm.coe.int/1680930c9a.

[13] 354 in RIC Moria on Lesvos, 58 in RIC Vial on Chios, 112 in RIC Vathy on Samos, 66 in RIC Pyli on Kos and 35 in RIC Lepida on Leros. UNHCR Greece estimates, 30 June 2019.

[14] Information shared by IOM Greece in the Child Protection sub Working Group Coordination meetings.

[15] In particular, 7 UAC shelters on Lesvos with 147 places, 1 shelter on Chios with 18 places and 1 shelter on Samos with 18 places.

[16] EODY: national public health organization

[17] Refugee Aegean Support Report: Structural failure: Why Greece's reception system failed to provide sustainable solutions: https://rsaegean.org/en/why-greece%ce%84s-reception-systems-failed-to-provide-durable-solutions/ (2019) & FRA Opinion – 3/2019 [Hotspots Update] Vienna, 4 March 2019: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-opinion-hotspots-update-03-2019_en.pdf.

EKKA) or, mainly, due to serious limitations in the reception capacity for UAC both on the islands and mainland. Furthermore, of concern are the gaps in the age assessment procedures[18] 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.

2.4.4. Access to recreational and informal educational activities on the islands remains limited and where available are usually run by external actors (UNHCR, IOM NGOs, volunteers) without or with minimum involvement of the Greek authorities. Moreover, 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 1625 children (ages 5 to 17 including UAC) residing in Moria on Lesvos have no access to formal education.

2.4.5. According to UNHCR reports, compiled following monitoring conducted by UNHCR field staff on the islands, the care and protection situation in those RICs for UAC is seriously sub-standard or fully lacking, with the worst conditions prevailing in the RICs of Samos and Lesvos as described below.

2.4.6. In Samos, male UAC share seven containers, all below standards, without doors, windows and an occupation rate of 18 boys per room who sleep in shifts for lack of beds. Dirty WASH facilities contribute to a severe lack of hygiene, which is further degraded by the reported use of UAC-assigned toilets by adults who enter UAC containers despite police control of the entry/exit during the day and a locked gate at night. Incidents of theft and bullying by adults have also been reported.

2.4.7. As of 30 June 2019, there were 112 children living in the Vathy RIC of Samos, including 11 separated and 101 unaccompanied children, of whom 66 UAC hosted in the Safe Zone. Among the UAC staying at the RIC, 10 are below the age of 14. 10 UAC are girls who are sharing one 4x3 m2 container located in a noisy overcrowded area next to the information booth in the arrival area with 24/7 police presence. The windows are locked for privacy reasons and the girls are escorted by the police to the toilet. For lack of space the girls also sleep in shifts. The girls wait for weeks for the issuance of a public prosecutor's order to be transferred to the mainland. A situation of particular concern that arose in June 2018 and which prevailed during the following six months, concerned female UAC, 10-17 years old, who were living under the same conditions described above in the RIC on Samos pending their administrative processing and referral to appropriate shelters. The space was extremely overcrowded and there were two chemical toilets next to the container, no running water and no access to showers.

2.4.8. In Lesvos, as of 30 June 2019, 354 children seeking protection reside in various areas of the Moria reception center including the temporary arrivals' hall – "Rubb Hall" (52 children among 290 adults) and the IOM-managed safe zone (66 children). The 200 m2 arrivals' Rubb Hall is for adult newcomers and families, with six toilets and three showers available for 250 persons. The majority of UAC spend more than 2.5 months there without targeted medical and psychosocial support services and 24 children are accommodated per one room of 42m2 with one toilet/shower, while 20 children are in tents. As an indication of the lack of security in the Rubb Hall, the RIC Secretariat for Minors reported to the Public Prosecutor in February 2018 that forty UAC were missing from the Rubb Hall and penal proceedings were initiated thereafter.

2.4.9. The strategy to rapidly decongest the RICs by placing children in hotels or Safe Zones on the mainland is one of several temporary/interim measures put in place by the humanitarian community to address the issue of cyclical overcrowding of UAC in the RICs since 2017. One hundred UAC were transferred during these efforts in 2017. Since January 2018, UNHCR facilitated the transfer of over

[18] Gaps in the age registration upon arrival by RIS/Police/Frontex exist in the application of the age assessment process by the RIS medical and psychosocial support unit (EODY) and owing to limited coordination among different state actors (RIS, EODY, Asylum Service). These gaps have been noted in public reports such as: 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, p.30: https://rm.coe.int/report-on-the-visit-to-greece-from-25-to-29-june-2018-by-dunja-mijatov/16808ea5bd ; FRA, Update of the 2016 FRA Opinion on fundamental rights in the hotspots set up in Greece and Italy, 4 March 2019, p. 40: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-opinion-hotspots-update-03-2019_en.pdf; Oxfam media briefing, 9 January 2019: https://www-cdn.oxfam.org/s3fs-public/file_attachments/2019-01_greece_media_briefing_final.pdf; Refugee Support Aegean report, 18 June 2019: https://rsaegean.org/en/why-greece%CE%84s-reception-systems-failed-to-provide-durable-solutions/.

1,150 UAC from the RICs (including Evros) to the IOM hotels and to Safe Zones. The transfer of UAC to those structures depends on the availability of places and is limited to children older than 14 years old and without a visible vulnerability. Thus, IOM hotels and Safe Zones are hosting a significant number of children with non-visible psychological vulnerabilities but they receive no specialized assistance for prolonged periods of times.

2.4.10. The Fylakio RIC in Evros operates as a closed facility[19] for registration purposes for up to 25 days. 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. 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,[20] 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.

### *2.5. UAC referred to care arrangements of the 2nd line reception*

2.5.1. Currently, the reception of UAC in Greece following their transfer from RICs or from police "protective custody" is in shelters (institutional care), Safe Zones in open accommodation centres, hotels run by IOM, SIL schemes or family-based care as elaborated below.

**a. Shelters (institutional care)**

2.5.2. There are currently 48 shelters with a total of 1,125 places available [21](approximately 750 places are funded by the Greece National Asylum and Migration Integration Fund (AMIF), with the remaining funded by private donors). Six more UAC shelters are being planned with a total of 228 places to be available by the end of October 2019.

2.5.3. A serious obstacle to the operation of shelters is the complexity of bureaucratic procedures in the financial management of the partnerships with the Greek State, which has led to significant delays in funding flow and to reservations by NGOs to submit proposals for opening new facilities under the same funding scheme. For example, at the end of 2018, the NGO Praksis withdrew from managing its 11 shelters due to serious delays in the flow of payments by the State; 6 out of the 11 shelters were taken over by IOM but more than 150 places for the care of UAC were lost as a result.

2.5.4. The lack of harmonized standards, both in law and in practice, for the operation and quality assurance of the services provided in the shelters has been a longstanding concern of UNHCR.[22] For the UAC who are fortunate to be placed in the shelters, the psychosocial impact of the predominantly institutional care model in Greece (large group homes housing up to 40 UAC) on children with heightened emotional and psychological needs should not be underestimated. While some children thrive in these group environments, research by the Institute for Child Health[23] and by NGOs attending to the needs of the children in Greece indicates that the majority do not. For many adolescents this form of care

[19] In accordance with Art. 14 L.4375/2019, RICs operate as closed facilities for up to 25 days until the completion of the registration and identification procedures. Persons subjected to these procedures should be notified with a decision of restriction of liberty from 3 up to 25 days. In practice, the RIC in Evros is the only facility operating as envisaged in the law, while in the 5 RICs on the islands there is de facto no restriction of liberty in the facilities. The only general restriction applied is the restriction of movement outside the island, unless the asylum or readmission procedure is finalised.

[20] The formal age assessment process is prescribed within the context of the First Reception Procedures and regulated by the Ministerial Decision Υ1.Γ.Π.οικ.92490/4-10-2013 (O.G.G. 2745/B'/29-10-2013).

[21] Despite funding for up to 2,000 places being available under the AMIF.

[22] UNHCR's findings through monitoring activities of reception centres.

[23] Institute of Child's Health & UNICEF (2017). Rapid assessment of MH&PS needs and service response to UAC in Greece.

does not correspond to their age, developmental stage or culture. Incidents of self-harm, suicidal ideation and intent are common place among the adolescents as is depression, anxiety disorders and, to varying degrees, symptoms of Post-Traumatic Stress Disorder (PTSD). EKKA, as the responsible agency for the provision of quality services and supervision according to law L. 4554/ 2018, will assume responsibility as of September 2019. It is expected that EKKA will be able to fulfill its role in providing supervision and guidance in terms of standards and operational procedures to all care providers in Greece, which is a key component in the capacity building efforts of UNHCR and UNICEF to EKKA.

**b. "Safe Zones" in the open accommodation centres**

2.5.5. There are currently 10 open accommodation sites on the mainland run by IOM and/or its partners and funded by the European Commission, all of which have Safe Zones. These Safe Zones, typically made up of a series of containers, are staffed by a multi-disciplinary team (social worker, lawyer, psychologist) who undertake case management work in respect of the children, as well as a team of 'caregivers' who provide 24-hour supervision seven days a week. Each Safe Zone accommodates a maximum of 30 UAC. Originally set up in 2016 in three carefully selected sites and implemented in line with inter-agency minimum standards as a temporary alternative to detention, the number of Safe Zones grew to 10 in 2017. The 7 new Safe Zones were rapidly set up with varying levels of success, depending on location, implementing partner and community engagement and buy-in. Challenges, among other reasons, included resistance by and aggressive behavior of the community in the site towards the UAC population, as well as increased misconduct by the hosted UAC due to prolonged stay in the Safe Zones. On a concerning note, according to UNHCR monitoring, UAC who - having crossed the land borders undetected and are thereby unregistered - have in some cases managed to reside unofficially in the open accommodation sites, mixed with the site residents in areas outside of the UAC - designated Safe Zones (which are generally full but a formal referral and registration is required to reside in a Safe Zone). Once identified, many of them are referred to EKKA, the Public Prosecutor and the Asylum Service by RIS managers or by child protection actors, after which they are formally registered but for the majority there is no possibility for immediate placement in an appropriate care arrangement, and their needs remain unattended.

**c. Hotels run by IOM**

2.5.6. There are currently 17 hotels run by IOM and/or its partners with a capacity of 660 places, funded by the European Commission since January 2018. These are staffed by a multi-disciplinary team (social worker, lawyer, and psychologist) who undertake case management work in respect of the children, as well as a team of caregivers who provide round-the-clock supervision. These hotels each accommodate a maximum of 30-35 children. In 2019, the Ministry of Labor and Social Solidarity was requested by the Greek State to plan, in collaboration with IOM, UNICEF and UNHCR, for an exit strategy of the UAC from the hotels and for their transfer into other care arrangements funded under the AMIF (shelters). These care arrangements will include the scaling up of the SIL scheme up to 260 places and the building of six more shelters. Although initially envisaged as temporary arrangements, the hotels have slowly become in 2018 and 2019 a standard part of the shelter solutions for UAC in Greece. Concerns over the use of this modality are linked to the fact that coverage of basic needs and provision of supervision have become the main benchmark, while issues of quality, continuity and appropriateness to age, developmental stage or culture of each individual child is not being prioritized in the planning and implementation of these measures.

**d. Supported Independent Living scheme (SIL)**

2.5.7. Currently there are 10 SIL apartments for UAC older than 16 years old with a total of 40 places. Based on good practices in other EU Member States such as in Italy, the Netherlands and the UK,[24] with similar numbers and profiles of UAC, UNHCR and UNICEF have successfully piloted projects in which 16-17 year old UAC are placed in small group homes (4 adolescents/unit) and given specialized support fostering their resilience, independence and life-skills as they move towards adulthood. These pilot initiatives, coupled with advocacy and technical support to the Greek authorities, have significantly contributed to legislative amendments that allow the rapid scale-up of this cost-effective, age and

[24] Roundtable on SIL: Experience from Italy, the Netherlands and the UK, UNHCR & UNICEF, Athens, January 2018.

culturally-appropriate alternative care model. UNHCR and UNICEF work with the Greek authorities on improving the effectiveness in the identification and referral mechanism of eligible children to the scheme and for the reinforcement of safeguards, especially within the framework of the exit strategy of UAC from the IOM hotels.

**e. Family based care**

2.5.8. Currently, there are 25 registered families (24 hosting UAC, with 14 families under assessment for suitability) in a project implemented by UNHCR and Metadrasi[25], which is funded by the European Commission. The project has remained small due to funding constraints and challenges in the existing legislative framework, which requires extensive supervision of these family-based care arrangements by NGO staff appointed by the child's temporary guardian (the competent Public Prosecutor for Minors). Nevertheless, it remains an important and innovative example of the type of individualized care, which is possible even under the existing legislative framework.

***2.6. Conclusion on reception conditions for children seeking protection***

2.6.1. Progress has been noted clarifying the institutional framework, efforts to create interim solutions and in the development of new, more holistic, models of care arrangements for UAC. Furthermore, the broader protective framework outside the RICs in terms of access to education, health care and social services, which form part of the national child protection system for children seeking protection in Greece, is relatively functional and accessible despite significant resource gaps.

2.6.2. However, the situation in the RICs, characterized by long administrative procedures (stays, significantly exceed the 25 day limit stipulated by law), delays in the age assessment procedures, and family links assessments and transfers to the mainland, lack of age appropriate medical and psychosocial care and accommodation that do not take into consideration the best interests of the child, undermine the rights of UAC. The exposure of children to sub-standard conditions and overcrowding increase their vulnerability and impact their psychosocial well-being.[26] In particular, UAC turn to negative coping mechanisms such as drug and alcohol abuse, and are targeted, as the most vulnerable, in fights and attacks and susceptible to trafficking, smuggling and exploitation.[27]

2.6.3. Furthermore, the ongoing deficiencies in the number, type and quality of care arrangements available for UAC in the mainland remains a serious gap for the last four years. According to EKKA, there are currently 2,858 children outside the long term care system, including 1,060 in informal and insecure housing conditions or homeless.[28] These children are living in the streets, in squats, in apartments with others or move frequently between different types of accommodation. This core deficiency in the national child protection system has serious implications for the well-being of the homeless unaccompanied children seeking protection. They cannot cover their basic needs and do not have access to medical or psychosocial care or to education. Some of the most common protection risks that these children are exposed to include labour exploitation, trafficking, Sexual and Gender Based Violence (SGBV) and exploitation.[29]

***2.7. UAC under "protective custody" pending referral to reception arrangements***

**a. Legislative framework**

[25] METAdrasi (Action for Migration and Development) is a Greek NGO operating mainly in the following two sectors, interpretation services and the protection of unaccompanied children and retaining a permanent front-line presence in all key entry and exit locations: https://metadrasi.org/en/metadrasi/.

[26] Save The Children International, 2017. A tide of self-harm and depression. The EU-Turkey Deal's devastating impact on child refugees and migrants: https://www.savethechildren.es/sites/default/files/imce/final_report_eu_turkey_deal_a_tide_of_self-harm_and_depression_march_20171.pdf.

[27] *Ibid.*

[28] "EKKA Dashboard for UAC in Greece", 31 May 2019: http://www.ekka.org.gr/images/EKKA_Dashboard_31-5-2019.pdf.

[29] Emergency Within an Emergency: The Growing Epidemic of Sexual Exploitation & Abuse of Migrant Children in Greece, FXB Centre for Health & Human Rights, Harvard (2017): https://fxb.harvard.edu/2017/04/17/new-report-emergency-within-an-emergency-exploitation-of-migrant-children-in-greece/.

2.7.1. Under Greek law, the detention of UAC seeking asylum is to be avoided and they are not be detained as a rule according to Art. 46 (10A) (a) L. 4375/2016. Only in very exceptional cases, UAC and separated children (hereafter children seeking asylum) who applied for international protection while in pre-removal detention may remain in detention, as a last resort, to ensure that they are safely referred to appropriate reception facilities for minors. This detention is to be exclusively imposed for the time necessary for the safe referral to appropriate reception facilities and cannot exceed 25 days. When, due to exceptional circumstances, such as the significant increase in arrivals of unaccompanied children, and despite the reasonable efforts by competent authorities, it is not possible to provide for the timely safe referral to appropriate reception facilities, detention may be prolonged for a further 20 days.

2.7.2. According to Art.118 P.D.141/1991, children can be placed under protective custody until they are referred to appropriate reception facilities or until they are reunited with the persons responsible for them. Protective custody under Greek law does not always amount to detention but, in practice, it has mostly been implemented through the detention of children in pre-removal detention facilities or police stations. In some cases, children have been placed under protective custody in hospitals, also under the care or supervision of police forces. According to the legal provisions on protective custody, there are no maximum time limits for the protective custody of children, which could lead to lengthy detention, if there are no available places in the accommodation facilities for minors or other alternative care options. Furthermore, Art. 118 P.D. 141/1991 provides that persons under protective custody should not, in principle, be kept locked in police cells, unless there is no other way to prevent the risks that they might cause to themselves or to others.[30]

2.7.3. According to Art. 46 (10A) (b) L. 4375/2016 and Art. 32 L. 3907/2011, children shall be detained separately from adult detainees. They shall be given the possibility to access recreational activities appropriate for their age and shall have, depending on the duration of their stay, access to education.

2.7.4. Art. 15, 16 (1) L. 4554/2018, provides that the Public Prosecutor for Minors, and in the absence of the latter, the First Instance Public Prosecutor of the territory, acts as temporary guardian for children seeking asylum. The Public Prosecutor, as temporary guardian shall ensure that legal representation is provided to the UASC, in particular within the asylum procedures and appoint a guardian as per the relevant provisions of the law. Moreover, the Public Prosecutors are also the competent legal authority under Art. 19 P.D. 220/2207 in conjunction with Art. 118 P.D. 141/1991 to issue a decision regarding the placement of children seeking asylum in protective custody.

**b. *Practice regarding the detention of children seeking protection***

2.7.5. The vast majority of children seeking asylum being held in detention in Greece are detained for the purpose of their referral to an appropriate reception facility, irrespective of the legal basis on which UAC are detained[31] and even in cases where the Public Prosecutor has not specifically issued a decision on protective custody. Pending this referral, children can be detained in police stations or pre-removal detention centers, or even in closed sections in the RICs where they have been transferred upon entrance for identification purposes.

2.7.6. Following the closure of the borders between Greece and some neighbouring countries in 2016, the number of children staying on a longer-term basis in Greece significantly increased, which is reflected by the number of referrals for accommodation of children seeking asylum received by EKKA, which has been responsible for referrals to reception facilities since July 2011.[32] The increase in the number of referrals has meant that many children have been on the waiting list of EKKA for a significant period, even up to several months, for referral to an appropriate open reception facility. As places for children seeking asylum have gradually increased as well as due to the availability of some places in alternatives

[30] See paragraph 4 of Art. 118 P.D. 141/1991 on the protective custody of persons, who due to their age or mental health, constitute a danger for the public order or expose themselves to danger.
[31] This applies also to children seeking asylum detained on the basis of a return/deportation decision, as return procedures for them in the vast majority of cases do not normally materialize.
[32] The total number of referrals of children seeking asylum to EKKA for accommodation in 2018 was 6,972, in 2017 4,423 and in 2016 4,949, whereas the total number of referrals in 2015 was 2,248.

to detention, such as the Safe Zones in open centres, there was a corresponding decrease in the numbers of children in detention awaiting referral in 2017.

2.7.7. As the reception capacity for UAC remains limited during 2018 there was an increase in the number of children seeking asylum detained for prolonged periods.[33] The number has been further increasing since April 2019 with more than 100 staying in police stations for approximately two weeks.

2.7.8. It is also noteworthy that children in detention face the risk of being subject to standardized age assessment procedures, the reliability of which is open to question. The consequence of an erroneous assessment is their subsequent detention in facilities for adults and for a longer period.[34]

2.7.9. In eight existing pre-removal detention centers (PRDCs), UNHCR has observed that the infrastructure lacks maintenance and repairs. This is coupled with gaps in the provision of services such as psychosocial support, medical care, legal assistance, cleaning services[35] as well as inadequate provision of non-food items and supply of relief items. Moreover, the provision of information to children in pre-removal detention facilities in a language that they understand continues to be problematic due to the lack of interpreters and translation of the administrative decisions. Despite the fact that access to open air and courtyards has improved in most of the pre-removal detention facilities, recreation and leisure activities especially for children or young adolescents are still limited. Insufficient heating and cooling in some of these detention centers also affects the health of the children.

2.7.10. The same applies to detention facilities operated by the Police Directorates and in police and port-police stations, which, based on UNHCR's observations, are completely inappropriate for children and are not designed to hold persons for longer than a few days. In most of the cases, they lack outdoor access and there is usually a lack of ventilation and natural light. The conditions in these facilities are frequently extremely poor and deteriorating due to overcrowding, insufficient maintenance and lack of refurbishment. In combination with serious concerns regarding hygiene conditions and lack of medical services, these facilities provide an environment, which constitutes a risk to the physical and mental health of children.[36] Furthermore, the police stations do not provide access to education for children nor to recreational activities, according to the age of the children, as is legally required.

### *c. Conclusion on detention of children seeking asylum*

2.7.11 UNHCR's position is that children should not be detained for immigration-related purposes, irrespective of their legal/migratory status or that of their parents, and detention is never in their best interests.[37] As described in the present submission, UAC in Greece can be detained for a long period in very sub-standard conditions before their referral to an appropriate reception facility. This is due

[33] Although, the Ministry of Migration Policy, with the assistance of UNHCR, facilitated the mass transfer of children seeking asylum from the RICs and detention facilities to hotels run by IOM during 2018, the number of children in detention remained high with a peak of 216 in detention at 15/6/2018 and a stabilization over the last months of 2018 at about 80 UASC.

[34] UNHCR recommends that age assessments should only be conducted in cases when a child's age is in doubt and as part of a comprehensive assessment that takes into account the physical appearance and the psychological maturity of the child. This is because no method can determine age definitely. Most experts agree that age assessment is not a determination of chronological age but an estimated guess. Moreover, age assessments are to be conducted in a safe, child- and gender-sensitive and fair manner with due respect for human dignity and taking into account the ethnic and cultural background of the child. If medical testing is considered necessary, the least invasive means should be applied. Where doubts remain about the child's age after an assessment, the asylum-seeker is to be given the benefit of the doubt and assumed to be a child. See, ExCom *Conclusion on Children at Risk*, No. 107 (LVIII), 2007: http://www.refworld.org/docid/471897232.html. See also, *UNHCR observations on the use of age assessments in the identification of separated or unaccompanied children seeking asylum*, 1 June 2015: http://www.refworld.org/docid/55759d2d4.html.

[35] UNHCR provides legal assistance and psychosocial support to children seeking asylum in Amygdaleza detention facility through the NGO, Arsis, but most of the children detained in other locations (mainly police stations) remain without access to legal assistance or without the provision of psychosocial support. Medical services in all PRDCs, were discontinued for 2 years between 2015-2017. In 2018 health units started operating in the PRDCs for the provision of healthcare, psychological support, social support and interpretation. However, there are significant gaps as the necessary personnel has not yet been recruited in most locations. Moreover, cleaning services are regularly interrupted in all the detention facilities. No cleaning services have been available since 1.1.2019 leading to totally sub-standard sanitary conditions causing serious health hazards for detainees.

[36] UNHCR, Briefing Note Unaccompanied and Separated Children in Europe, June 2016, p. 2: https://www.unhcr.org/ngo-consultations/ngo-consultations-2016/Europe-Bureau-Briefing-Note.pdf.

[37] UNHCR, *UNHCR's position regarding the detention of refugee and migrant children in the migration context*, ('UNHCR January 2017 Position Paper') January 2017: http://www.refworld.org/docid/5885c2434.html.

primarily to a lack of appropriate reception capacity but also an absence of adequate safeguards in the Greek legal framework, such as a lack of time limitation, and the fact that protective custody for immigration-related purposes is allowed by law. [38]

### *2.8. Guardianship system*

#### a. Legislative framework

2.8.1. In 2018 a comprehensive law (Law 4554/ 2018) on the guardianship of unaccompanied children was adopted by the Greek Parliament,[39] which addresses a number of critical gaps of the previous legal framework. The personal scope of its application is explicitly defined and includes non-Greek nationals and stateless unaccompanied children and separated children. It introduces the possibility to appoint a professional guardian, employed by EKKA; establishes a supervisory board of guardianship for unaccompanied children; explicitly provides for the implementation of a best interests assessment and determination procedures with the use of specific tools, which should precede decisions regarding the child and lastly, provides for the establishment of three registries (for unaccompanied children, for professional guardians and for reception centres for unaccompanied children).[40]

2.8.2. Law 4554/2018 will enter into force on 1 September 2019[41] and in June and July 2019 all regulatory acts (Ministerial Decisions) required for the full implementation of the Law were issued.[42] Until 1 September, the Presidential Decree (PD) 220/2007 (transposing the previous Reception Conditions Directive) applies, which provides for a system of guardianship (Art. 19 P.D. 220/2007), which has shortcomings.

2.8.3. According to PD 220/2007, the Public Prosecutor acts as a temporary Guardian for all UAC and separated children as soon as they come to his/her attention so as to be able to immediately react for the protection and representation of the child. The main duty of the temporary guardian is to introduce the case to court, which will assign guardianship of the child to either an individual (most commonly a relative) with the supervision of a Supervisory Board (relatives, friends of family, public officials such as social services) or an institution or social services. The current legal framework lacks specialized provisions to address the specific reality and needs of children seeking asylum, for instance, such as the absence of relatives. Furthermore, the legal framework is rendered ineffective due to lack of bodies/services that will undertake the Supervisory Board's responsibility and persons/bodies that will undertake the actual duties of guardians, as the competency is not clearly assigned to any of the existing services (e.g. Regional social services, Municipal social services, Youth Justice teams, or else).

#### b. Practice

2.8.4. Public Prosecutors as temporary guardians must guarantee the best interests of the child as stipulated by Greek legislation in general. As no specific formal procedure for assessing the best interest of the child is provided by the current legislation in force nor have any formal procedures been adopted in practice, decision making is based solely on the Public Prosecutor's discretion, whilst no policy guidance exists on how to exercise it.

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[38] See also *H.A. and others v. Greece*, no. 19951/16, ECtHR, 28 February 2019, para. 202: https://www.refworld.org/cases,ECHR,5c780a0d7.html.

[39] "Provisions on Social Security and Pension, tackling of undeclared work, strengthening of workers' protection, guardianship of unaccompanied minors plus other provisions", L. 4554/2018 (OGG A' 130/18.07.2018).

[40] In 2017, following an invitation from the Greek authorities UNHCR took active part in consultations for the drafting of the new law on guardianship from a very early stage. Furthermore, UNHCR was called to present its views to the Parliament, which was done through the submission of a memo along with UNICEF. As a result, the draft Law largely reflects UNHCR's proposals and positions, in many of its aspects.

[41] Art. 32 of the Law 4554/2018, as amended by Art. 85 par. 2 L. 4611/2019.

[42] a) Δ11/οικ.28303/1153/21-6-2019 Joint Ministerial decision (O.G.G B', 2558/27-6-2019) on the required qualifications for the recruitment of guardians, b) Δ11/οικ.26943/1073/12-6-2019 Ministerial decision on the National Registry for UAC (O.G.G. B', 2474/24-6-2019, c) Δ11/οικ.28304/1153/21-6-2019 Joint Ministerial decision on the National Registry for guardians (O.G.G. B' 2775,2-7-2019), d) Δ11/οικ.26945/1074/10-6-2019 Ministerial decision on the National Registry for UAC care arrangements (O.G.G B', 2399/19-6-2019), e) Δ11/28925/1169/3-7-2019 Ministerial Decision on the Regulation of the Supervisory Board for the Guardianship of UAC (O.G.G. B', 2890/5-7-2019).

2.8.5. In practice, currently, Public Prosecutors very rarely take cases to court for a permanent guardian to be designated. As a result Public Prosecutors remain the temporary guardians of a high number of children seeking asylum, in respect of whom they do not have the capacity to act. By way of example, in the region of Attika, which includes Athens, there are only two Public Prosecutors for Minors who act as temporary guardians in addition to their main duties. This results in a non-existent relationship with children assigned to them (they very rarely even see the children). Furthermore, different practices have been observed across Greece, such as the Public Prosecutor remaining as guardian and not temporarily or the Court appointing a guardian without conducting an assessment regarding appropriateness (for instance, assigning guardianship to a non-specialized public official at entry points of arrival, while the children might leave the location, or to the directors of RICs). In specific acts of representation for which the presence of a guardian is required by law, such as in the asylum procedure for children seeking asylum under the age of 14 years old, Public Prosecutors either assign the task of representation to NGOs or to an official of the Asylum Service, the latter being in clear conflict of interest. For reasons of capacity, NGOs, may not be able to represent the child on an *ad hoc* basis and in such instance, representation of the child is not assured.

2.8.6. Since January 2019 and in view of the application of the new legal and institutional framework as of September 2019, UNHCR is working with the Ministry of Labour (MoL)/EKKA and Metadrasi, within a tripartite agreement, to temporarily pilot the implementation of the Guardianship Law and transition this responsibility to the MoL and EKKA under funding of the AMIF National Plan by September 2019. This transition of the guardianship program aims at the operationalization of EKKA through seconded of staff who act as guardians for children seeking asylum (until the law is fully in force) for the protection and safeguarding of 1,100 children seeking asylum residing across Greece (in protective custody, RICs, Hospitals, Shelters and SIL scheme, IOM-run Hotels and Safe Zones) and homeless children.

## 3. Principles of international refugee and European human rights law regarding the reception of children and the best interests of the child

### *3.1. The principle of the best interests of the child under international and European human rights law*

3.1.1. A fundamental concept found in the *Convention on the Rights of the Child* (CRC) is the right of the child to have her or his best interests taken as a primary consideration in all legislative, administrative or judicial actions or decisions affecting her or him, directly or indirectly.[43] UNHCR's Executive Committee **(**ExCom) has stressed that all action taken on behalf of refugee children must be guided by the principle of the best interests of the child and the principle of family unity and reiterated the widely-recognized principle that children must be among the first to receive protection and assistance.[44] As the Convention on the Rights of the Child Committee (CRC Committee) has stated:

> "[a]ssessing and determining the best interests of the child require procedural guarantees. Furthermore, the justification of a decision must show that the right has been explicitly taken into account. In this regard, States parties shall explain how the right has been respected in the decision, that is, what has been considered to be in the child's best interests; what criteria it is

[43] Article 3(1) CRC. See further: UN Committee on the Rights of the Child, *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration*, 29 May 2013, CRC/C/GC/14: https://www.refworld.org/docid/51a84b5e4.html. The Committee on the Rights of the Child and the Committee on the Rights of Migrant Workers stated in their joint General Comment issued in 2017, that "States parties shall ensure that the best interests of the child are taken fully into consideration in immigration law, planning, implementation and assessment of migration policies and decision-making on individual cases, including in granting or refusing applications on entry to or residence in a country, decisions regarding migration enforcement and restrictions on access to social rights by children and/or their parents or legal guardians, and decisions regarding family unity and child custody, where the best interests of the child shall be a primary consideration and thus have high priority": https://www.refworld.org/docid/5a12942a2b.html.

[44] ExCom Conclusion, *Refugee Children, No. 47 (XXXVIII) - 1987*, para c and d: https://www.refworld.org/docid/3ae68c432c.html. ExCom Conclusions are adopted by consensus by the States which are Members of the Executive Committee of UNHCR and can therefore be considered as reflecting their understanding of legal standards regarding the protection of refugees.

based on; and how the child's interests have been weighed against other considerations, be they broad issues of policy or individual cases."[45]

3.1.2. The best interests of the child aims to ensure "both the full and effective enjoyment of all the rights recognized in the [CRC] and the holistic development of the child"[46], including therefore in the context of implementing Art. 27 CRC concerning the child's right to an adequate standard of living.[47] The protection and wellbeing of a child as well as sustainable care and solutions can only be provided if the best interests are systematically considered. This means the best interests' principle is fundamental not only for the development, stability, and future of a child, but also for the society around her or him.[48]

3.1.3. The CRC Committee further expressed that in the case of a displaced child "the [best interests of the child] principle must be respected during all stages of the displacement cycle." This requires "a clear and comprehensive assessment of the child's identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs. The assessment process should be carried out in a friendly and safe atmosphere by qualified professionals who are trained in age and gender-sensitive interviewing techniques."[49]

3.1.4. With regard to the right to an adequate standard of living, the CRC Committee has stated that "[s]tates should ensure that separated and unaccompanied children have a standard of living adequate for their physical, mental, spiritual and moral development. As provided in Article 27§2 of the Convention, States shall provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing."[50]

3.1.5. The European Court of Human Rights (ECtHR) has consistently held that there is currently a broad consensus – including in international law – in support of the idea that in all decisions concerning children, their best interests must be paramount, including in terms of accessing proper reception and care arrangements.[51] The UN Human Rights Committee has equally noted the importance for State parties to give due consideration to the principle of the best interests of the child in every decision dealing with unaccompanied children. This implies that unaccompanied children entering a country should not be detained or, only as a measure of last resort and for the shortest period of time necessary, adequate conditions in reception facilities should be provided to them including their segregation from adults. States should make sure that every unaccompanied child has a legal guardian and that age assessment procedures take into account the well-being of the child.[52]

3.1.6. The principle of the best interests of the child also cuts across all legal instruments of the Common European Asylum System. According to Article 23 of the Reception Conditions Directive (RCD), the best interests of the child shall be a primary consideration for member States when implementing those provisions of the RCD that involve children. Article 24 of the Charter of Fundamental Rights of the

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[45] CRC, *General comment No. 14 (2013)*, para. 6(c): https://www.refworld.org/docid/51a84b5e4.html.
[46] *Ibid.* para. 4.
[47] It should be recalled that there is no hierarchy of rights in the CRC, all of which are in the best interests of the child. *Ibid.* The CRC also makes explicit reference in Art. 22 to the right of refugee children to receive protection and humanitarian assistance in the enjoyment of the rights of the CRC and other applicable international human rights or humanitarian treaties, for which purpose states are required to cooperate with the UN and other competent inter-governmental or non-governmental bodies.
[48] UNHCR, *The Way Forward to Strengthened Policies and Practices for Unaccompanied and Separated Children in Europe*, ('The Way Forward'), July 2017, page 45: https://www.refworld.org/docid/59633afc4.html.
[49] UN CRC, *General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6, para. 19 to 22: https://www.refworld.org/docid/42dd174b4.html.
[50] Ibid., para. 44
[51] *Rahimi v. Greece*, no. 8687/08, ECtHR, 5 April 2011, para. 108: https://www.refworld.org/cases,ECHR,4d9c3e482.html; *Neulinger and Shuruk v. Switzerland [GC]*, no. 41615/07, ECtHR, 6 July 2010, para. 135: https://www.refworld.org/cases,ECHR,5183e05d4.html. Equally, several UN Special Rapporteurs have recalled that "*the best interests of the child should be the paramount consideration, including in the context of migration management, and children should never be detained for reasons related to their own or their parents' migration status"*: https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23245&LangID=E.
[52] UN Human Rights Committee, C*oncluding observations on the second periodic report on Greece*, CCPR/C/GRC/CO/2, 3 December 2018, para. 31-32: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/GRC/CO/2&Lang=En.

European Union states that in "all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration." This principle was also reaffirmed in the jurisprudence of the Court of Justice of the European Union.[53] In addition, the RCD indicates that "Member States shall ensure a standard of living adequate for the minor's physical, mental, spiritual, moral and social development"[54] and that as particularly vulnerable asylum-seekers, their specific situation should be taken into account by Member States.[55]

### *3.2 International refugee and human rights law standards regarding the reception of children seeking protection*

3.2.1. Children seeking protection are in a state of particular vulnerability[56] due to their age, distance from home, and sometimes separation from parents or relatives. They are exposed to on-going protection risks,[57] including sexual exploitation and abuse[58] due to insufficient security, sub-standard[59] and overcrowded reception sites,[60] lack of specific services, non-sufficient access to formal or non-formal education, and lengthy asylum procedures for reuniting families, which also severely impacts their psychosocial well-being. Unaccompanied children as a particularly vulnerable group, are at a high risk of being victims of violence.[61]

3.2.2. The rights of children seeking protection are provided for in different international instruments that are interconnected, with the UN *Convention on the Rights of the Child* (CRC)[62] as the corner stone. The CRC sets out a number of principles regarding the protection of children which apply through all stages of displacement,[63] including:

- There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinions, national, ethnic or social origin, property, disability, birth or other status, or on the

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[53] CJEU, C-648/11, *MA, BT and DA v Secretary of State of the Home Department*, 6 June 2013: http://curia.europa.eu/juris/document/document.jsf?docid=138088&doclang=EN.

[54] Article 23, Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.

[55] *Ibid*., Article 21. Under EU asylum law, the detention of unaccompanied and separated children seeking asylum is governed by Article 11(3) of the Reception Conditions Directive (recast) which states that "[u]naccompanied minors shall be detained only in exceptional circumstances. All efforts shall be made to release the detained unaccompanied minor as soon as possible. Unaccompanied minors shall never be detained in prison accommodation. As far as possible, unaccompanied minors shall be provided with accommodation in institutions provided with personnel and facilities which take into account the needs of persons of their age. Where unaccompanied minors are detained, Member States shall ensure that they are accommodated separately from adults."

[56] *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, ECtHR, 12 October 2006, para. 55: https://www.refworld.org/cases,ECHR,4533718d4.html; *Popov v. France*, no. 39472/07 and 39474/07, ECtHR, 19 April 2012, para. 91: https://www.refworld.org/cases,ECHR,58a72adf4.html; *Tarakhel v. Switzerland [GC]*, no. 29217/12, ECtHR, 4 November 2014, para. 99: https://www.refworld.org/cases,ECHR,5458abfd4.html. See also ExCom Conclusion on Children at Risk, No. 107 (LVIII), 2007, note 34 above, preamble para 4.

[57] See § 2.6.2 and 2.6.3 above.

[58] Report of the fact-finding mission by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees to Greece and "the former Yugoslav Republic of Macedonia", 7-11 March 2016, Information Documents SG/Inf(2016)18, pp. 13-14: https://reliefweb.int/report/greece/report-fact-finding-mission-ambassador-tom-bo-ek-special-representative-secretary. See also, Lanzarote Committee Special report on "Protecting children affected by the refugee crisis from sexual exploitation and sexual abuse", 3 March 2017, p.17: https://rm.coe.int/special-report-protecting-children-affected-by-the-refugee-crisis-from/16807912a5.

[59] Greece similarly pointed out that "*the large number of arrivals of children who are not placed in adequate reception facilities makes it more difficult to implement prevention measures with regard to sexual exploitation and abuse. Unaccompanied children are particularly exposed to sexual crimes and harassment in such conditions*." *Ibid*. Lanzarote Committee Special Report, p.26.

[60] Including other locations used as temporary shelter by refugee and asylum-seekers such as parks, train stations, and bus stations.

[61] UNHCR Recommendations for Greece in 2017, February 2017: https://www.refworld.org/docid/58da795e4.html. Furthermore, "UNHCR and partners have received increasing reports of boys and girls being harassed, suffering instances of violence, including SGBV, and/or abused in reception centres". See UNHCR, *Briefing Note Unaccompanied and Separated Children in Europe*, June 2016, p. 3: https://www.unhcr.org/ngo-consultations/ngo-consultations-2016/Europe-Bureau-Briefing-Note.pdf.

[62] Ratified by Greece by Law 2101/1992. UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3: http://www.refworld.org/docid/3ae6b38f0.html.

[63] UN CRC, *General Comment No. 6 (2005)*: note 49 above, paras 12-30.

basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians or family members (Article 2);

- Each child has a fundamental right to life, survival and development to the maximum extent possible (Article 6);
- Children should be assured the right to express their views freely and their views should be given "due weight" in accordance with the child's age and level of maturity (Article 12);[64]
- States Parties shall, in accordance with their national laws, ensure alternative care for such a child. Such care could include, inter alia, foster placement or, if necessary, placement in suitable institutions for the care of children. When considering options, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background (Article 20(2) and (3));
- Asylum-seeking and refugee children are entitled to receive appropriate protection and humanitarian assistance in line with the CRC and other international instruments (Article 22);
- Each child has the right to the "highest attainable standard of health" (Article 24).

3.2.3. Furthermore, in their joint comments,[65] the CRC Committee and the UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families ('CMW') recalled the following, of particular relevance to the underlying case:

- Children should "be treated first and foremost as children"[66] and "all children, including children accompanied by parents or other legal guardians, should be treated as individual rights holders"[67].
- "[S]tates should ensure that children in the context of international migration have a standard of living adequate for their physical, mental, spiritual and moral development. (…) States (…) shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing. (…) States should take measures to ensure an adequate standard of living in temporary locations, such as reception facilities and formal and informal camps, ensuring that these are accessible to children and their parents."[68]
- "Every migrant child should have access to health care equal to that of nationals, regardless of their migration status. This includes all health services, whether preventive or curative, and mental, physical or psychosocial care, provided in the community or in health-care institutions."[69]
- "States should adopt solutions that fulfil the best interests of the child, along with their rights to liberty and family life, (…). When children are unaccompanied, they are entitled to special protection and assistance by the State in the form of alternative care and accommodation."[70]

3.2.4. The 1951 Refugee Convention and the 1967 Protocol relating to the Status of Refugees[71] set standards that apply to children in the same way as to adults; no distinction is made between children and adults in social welfare and legal rights.[72]

### *3.3 UNHCR's position regarding the reception of children seeking protection*

[64] UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, para. 5, 22 December 2009: http://www.unhcr.org/refworld/docid/4b2f4f6d2.html.

[65] *UN CMW, Joint general comment No. 4 (2017) and UN CRC No. 23 (2017)* on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, 16 November 2017, CMW/C/GC/4-CRC/C/GC/23: http://www.refworld.org/docid/5a12942a2b.html.

[66] *UN CMW, Joint general comment No. 3 (2017) and UN CRC No. 22 (2017)* on the general principles regarding the human rights of children in the context of international migration, 16 November 2017, para.11: https://www.refworld.org/docid/5a1293a24.html.

[67] *UN CMW, Joint general comment No. 4 (2017) and UN CRC, No. 23 (2017)*, note 65 above, para.15.

[68] *Ibid*., para. 49.

[69] *Ibid*., para. 55.

[70] *Ibid*., para. 11.

[71] UNGA, *Convention Relating to the Status of Refugees*, 28 July 1951, and P*rotocol Relating to the Status of Refugees*, 31 January 1967: https://www.unhcr.org/3b66c2aa10.

[72] UNHCR, *Refugee Children: Guidelines on Protection and Care*, 1994, p.17: https://www.refworld.org/docid/3ae6b3470.html.

3.3.1. As ExCom has noted, children should be among the first to receive protection and assistance.[73] UNHCR has called on States to put in place, in the context of their screening, registration and reception procedures, all the necessary mechanisms to properly identify and register children seeking asylum as well as to conduct best interests' assessments or determinations, as appropriate, with the involvement of child protection experts.[74] This is the first step to put in place an effective system of referrals and, when necessary, appoint guardians and proceed to family reunification.[75]
3.3.2. The prompt provision of appropriate care arrangements and services, which respond to the specific needs of boys and girls is fundamental for children's wellbeing and protection but also for their development and future prospects, where social and psychological components (in the form of mental health and psychosocial support), education[76] and health services[77], play a key role.

3.3.3. Community-based programmes must always be set in place to ensure adequate reception[78] (in particular for children who are unaccompanied or separated) are adapted to the age, specific needs[79] and conditions of dependency.[80] When children are travelling together with their parents or family members, care arrangements or other alternative solutions should extend to the entire family whenever it is in the best interests of the child to keep the family together.[81]

3.3.4. Although reception and detention of asylum-seekers "are ostensibly separate legal and factual spheres",[82] the line between these two spheres have become increasingly blurred. In the absence of proper reception facilities, the practice of placing children in "protective custody" until they are transferred to appropriate reception or they are reunited with the persons responsible for them, is nonetheless contrary to European and international human rights standards.[83] An ethic of care – not detention or enforcement – needs to govern all actions taken and the principles of minimal intervention and the best interests of the child should govern any measures taken by States.[84]

3.3.5. Children held in detention are at risk of suffering depression and anxiety, and frequently exhibit symptoms consistent with post-traumatic stress disorder such as insomnia, nightmares and bedwetting.[85] Even when efforts are made to limit the disadvantages of detention and all is put in place in order to limit

[73] ExCom Conclusion on Children at Risk, No. 107 (LVIII), 2007, (b) i.: note 34 above.
[74] UNHCR, *The Way Forward*, note 48 above.
[75] While efforts have been undertaken to strengthen the legal and institutional framework for child protection in Greece, significant protection gaps described above, have a particular impact on children affecting severely their social well-being, with heightened risks of sexual exploitation and abuse. Children are more significantly affected by the lack of security; lack of specialized adequate services and sub-standard conditions in the camp-like accommodation facilities and RICs; limited access to education; family reunion processing delays and lengthy asylum procedures. See, 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*, April 2017, p. 7: https://www.refworld.org/docid/595675554.html.
[76] UNHCR recalls that Article 22 of the 1951 Convention requires children to receive the 'same treatment' or access to primary education as nationals and treatment at least as favorable as that given to non-refugee aliens in secondary education. In addition, UNHCR has noted, the long term effects the lack of access to formal education has on the development of the children, as well as on the host communities. See: UNHCR, *The Way Forward*, note 48 above, p.25 and UNHCR, *Left Behind: Refugee Education in Crisis*, September 2017: https://www.refworld.org/docid/59b7ed854.html.
[77] "It is unreasonable to expect that medical expertise and technical inputs alone can ensure the adequate health of a population: the ultimate determinants of a child's health status are factors involving food, water, environmental sanitation and shelter." UNHCR, *Refugee Children: Guidelines on Protection and Care*, 1994, p.54: https://www.refworld.org/docid/3ae6b3470.html.
[78] UNHCR January 2017 Position Paper, note 37 above.
[79] ExCom Conclusion on Children at Risk, No. 107 (LVIII), 2007, preamble para 4, note 34 above.
[80] UN CRC, *General Comment No. 6 (2005)*, note 49 above, paras 39-40; Committee on Economic, Social and Cultural Rights, General Comment 4, The right to adequate housing, E/1992/23, annex III at 114 (1991), para. 11: https://www.refworld.org/docid/47a7079a1.html; Written submissions on behalf of the Aire Centre, the Dutch Refugee Council, ECRE and the ICJ in the case Trawalli and others v. Italy (No. 47287/17), 12 June 2018, para. 36 and 40: https://www.icj.org/wp-content/uploads/2018/07/Italy-icjothers-Trawalliothers-Advocacy-legal-submission-2018-ENG.pdf.
[81] See, *UN CMW, Joint general comment No. 4 (2017) and UN CRC, No. 23 (2017)*, note 65 above, para. 11.
[82] The reception of asylum-seekers in Europe: failing common standards, EU Immigration and Asylum Law and Policy, 20 April 2016: https://eumigrationlawblog.eu/the-reception-of-asylum-seekers-in-europe-failing-common-standards/.
[83] See *H.A. and others v. Greece* (application no. 19951/16), ECtHR, 28 February 2019: https://www.refworld.org/cases,ECHR,5c780a0d7.html.
[84] UNHCR January 2017 Position Paper, note 37 above.
[85] For more on the negative effects of detention on children, see: http://www.fmreview.org/detention/farmer.html; https://idcoalition.org/wp-content/uploads/2016/09/End-Child-Detention-Advocacy-Brochure_web_spreads_190816-1.pdf and https://picum.org/wp-content/uploads/2019/06/Child-Immigration-Detention-in-the-EU-ENG.pdf

the harm caused to the family, detention has an "anxiety-inducing effect on children" and make children "feel a sense of guilt for what happened". Furthermore, the "state of being locked in was experienced very negatively."[86] There is indeed strong evidence that detention has a profound and negative impact on children's health and development, regardless of the conditions in which children are held, and even when detained for short periods of time or with their families.[87] The risk of exposure to other forms of harm, including sexual and gender-based violence, are also significant in many detention contexts.

3.3.6. UNHCR's position is that children should not be detained for immigration related purposes[88], irrespective of their legal/migratory status or that of their parents,[89] and detention is never in their best interests.[90] Moreover, children should never be criminalised or subjected to punitive measures because of their parents' migration status.[91] Instead, appropriate care arrangements and alternatives to detention need to be in place, preferably through family-based alternative care options or other suitable alternative care arrangements.[92] This is in accordance with international standards.[93]

### 3.4. *Relevant European human rights standards*

3.4.1. Before highlighting the standards relating to the protection of children seeking international protection under the ECHR and the ESC, UNHCR recalls that, according to the European Court of Human Rights (ECtHR), such standards should be interpreted 'in harmony with other rules of international law of which it forms part',[94] particularly where such other rules are found in human rights treaties (such as the 1951 Convention and the ICCPR). In the same vein, the European Committee of Social Rights (ECSR) recalled that the European Social Charter (ESC) is a living instrument dedicated to the values which inspired it, namely dignity, autonomy, equality and solidarity. It must be interpreted so

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[86] *Huseini v. Ministry of Justice and Public Security*, Norway, Borgarting Court of Appeal, 181 ILR 419, 31 May 2017

[87] "Children's emotional and behavioral responses to separation and to detention suggest that the experience is acutely stressful and, in some cases, traumatic, even when detention is brief. Distress and impairment may persist months after release." See Kronick, Rousseau and Cleveland, American Journal of Orthopsychiatry 85(3):287-294, May 2015: https://www.ncbi.nlm.nih.gov/pubmed/25985114.

[88] UNHCR January 2017 Position Paper, note 37 above. Moreover, UNHCR notes that "no other qualifications should be added to the baseline position of non-detention of children for immigration related purposes. References to the application of Art. 37(b), 'exceptional circumstances / measure of last resort', are not appropriate for cases of detention of any child for immigration related purposes."

[89] 'Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof.' UN CRC, *General comment No. 6* (2005), note 49 above, para. 61. Furthermore, the 'detention of a child because of their or their parent's migration status constitutes a child rights violation and always contravenes the principle of the best interests of the child. In this light, States should expeditiously and completely cease the detention of children on the basis of their immigration status.' UN CRC, *Report of the 2012 Day of General Discussion on the Rights of All Children in the Context of International Migration* (UN CRC, *2012 DGD*), 28 September 2012: http://www.refworld.org/docid/51efb6fa4.html. See also, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, March 5, 2015, A/HRC/28/68, para. 80, concluding that "[w]ithin the context of administrative immigration enforcement, it is now clear that the deprivation of liberty of children based on their or their parents' migration status is never in the best interests of the child, exceeds the requirement of necessity, becomes grossly disproportionate and may constitute cruel, inhuman or degrading treatment of migrant children.": https://www.refworld.org/docid/550824454.html.

[90] UNHCR January 2017 Position Paper, note 37 above. See also, UN High Commissioner for Human Rights: '[l]et us be clear: immigration detention is never in the best interests of the child.' *Children and families should never be in immigration detention - UN experts*': http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21026&LangID=E#sthash.fwKB9lJR.dpuf.
Similarly, the UN Special Rapporteur on the human rights of migrants, has held that detention of children will never be in their best interests: UN *Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante*, A/HRC/11/7, 14 May 2009, para. 62: http://www.refworld.org/docid/4a3b51702.html.

[91] 'Children should not be criminalized or subject to punitive measures because of their or their parents' migration status'. UN CRC, *2012 DGD*, note 89 above, para. 78. See also, UNICEF, *A home away from home for refugee and migrant children*, August 2016: https://www.unicef.org/eca/sites/unicef.org.eca/files/A_home_away_from_home_29_08_2016.pdf.

[92] See UNHCR, 2012 Detention Guidelines, Annex A, and UNHCR, *Options Paper 1: Options for governments on care arrangements and alternatives to detention for children and families*, 2015, http://www.refworld.org/docid/5523e8d94.html.

[93] UN Special Rapporteur on Torture, Thematic Report on torture and ill-treatment of children deprived of their liberty, 5 March 2015 (A/HRC/28/68), para. 80: http://www.refworld.org/pdfid/5501506a4.pdf. See also, IACtHR, *Advisory Opinion OC-21/14*, *supra*, para. 6; UN CRC, *General comment No. 6 (2005)*, note 49 above; UN CRC, *2012 DGD*, note 89 above, para. 78.

[94] *Al-Adsani v. The United Kingdom*, no. 35763/97, ECtHR, 21 November 2001, para. 55, http://www.refworld.org/docid/3fe6c7b54.html; Vienna Convention on the Law of Treaties, 23 May 1969, UN Treaty Series, Article 31(3)(c), http://www.refworld.org/docid/3ae6b3a10.html.

as to give life and meaning to fundamental social rights.[95] These other rules of international law have a bearing on the obligations under the ESC in this case, such as the right to housing, health, and social, legal and economic protection, as required by Article 31(3)(c) of the Vienna Convention on the Law of Treaties and as acknowledged by the ECSR.[96]

3.4.2. In *M.S.S. v. Belgium and Greece*, the ECtHR found that Greece failed to provide decent reception conditions to the applicant in breach of Article 3 of the Convention. It relied on various elements to determine the reception conditions amounted to degrading treatment, including:

- The severe overcrowding, the poor sanitation conditions, the lack of access to most basic services in the migrant center;[97]
- The fact that, upon his release, the applicant was forced to live in a park and "allegedly spent months living in a state of the most extreme poverty, unable to cater for his most basic needs: food, hygiene and a place to live";
- The mental distress and insecurity caused by this situation and the "the ever-present fear of being attacked and robbed" added to the absence of any prospect of evolution of his situation.[98]

The Court took the view that the obligation to provide accommodation and decent material conditions to impoverished asylum-seekers had entered into positive law and the Greek authorities were bound to comply with their own legislation transposing European Union law, namely the Reception Directive. The Court attached considerable importance to the applicant's status and vulnerability as a member of a particularly underprivileged and vulnerable group in need of protection.

3.4.3. With regard more specifically to children,[99] the Court has held that reception conditions for children seeking asylum must be adapted to their age and that children should not live in conditions fostering "a situation of stress and anxiety, with particularly traumatic consequences"[100] as this would amount to a breach of Article 3. It has established, furthermore, that it is important to bear in mind that the child's extreme vulnerability[101] "is the decisive factor and takes precedence over considerations relating to the […] status as an illegal immigrant."[102]

3.4.4. The Court further considered in *Tarakhel v. Switzerland* that as asylum-seekers were considered as a "particularly underprivileged and vulnerable population group" and should benefit from a "special protection" under the provision of Article 3 and that children were even more in need of this special protection "in view of their specific needs and their extreme vulnerability."[103] The Court found that "the possibility that a significant number of asylum-seekers may be left without accommodation or accommodated in overcrowded facilities without any privacy, or even in insalubrious or violent conditions, cannot be dismissed as unfounded."[104] It went on to state that an applicant who was wholly

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[95] ECSR, *FIDH v. France*, no. 14/2003, Decision on the Merits, 8 September 2004, para. 29: https://www.refworld.org/cases,COEECSR,4fe9d0352.html.

[96] The "Charter should so far as possible be interpreted in harmony with other rules of international law of which it forms part". ECSR, *DCI v. Netherlands*, 20 October 2009, para. 35: https://www.refworld.org/cases,COEECSR,4b9e37ea2.html.

[97] *M.S.S. v. Belgium and Greece*, no. 30696/09, ECtHR, 21 January 2011, para. 222 to 233: https://www.refworld.org/cases,ECHR,4d39bc7f2.html.

[98] *Ibid*., para. 254

[99] In *Popov v. France*, the ECtHR observed that the CRC encourages States to take appropriate measures to ensure that a child who is seeking to obtain refugee status enjoys protection and humanitarian assistance, whether the child is alone, accompanied by his or her parents. *Popov c. France*, *op.cit*., para.91.

[100] *Tarakhel v. Switzerland*, *op. cit*., para. 104.

[101] *M.S.S. v. Belgium and Greece*, *op.cit*., para. 232; *Rahimi v. Greece*, no. 8687/080, ECtHR, 5 July 2011, para. 87: https://www.refworld.org/cases,ECHR,4d9c3e482.html. See also, *UN CMW, Joint general comment No. 3 (2017) and UN CRC No. 22 (2017)* note 66 above, para. 3.

[102] *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, *op. cit*., para. 55; and *Popov v. France*, *op.cit*., para. 91; *A.B. and Others v. France*, no. 11593/12: http://www.refworld.org/pdfid/5784e34e4.pdf; *R.M. and M.M. v. France*, no. 33201/11: https://www.refworld.org/pdfid/5784e5cc4.pdf *A.M. and Others v. France*, no. 24587/12: https://www.refworld.org/pdfid/5784e41b4.pdf, *R.K. v. France*, no. 68264/14: https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-164684%22]} and *R.C. v. France*, no. 76491/14.

[103] *Tarakhel v. Switzerland*, *op.cit*., paras 118-119. See also, *Rahimi v. Greece*, where the ECtHR emphasized that as a 15 year old unaccompanied Afghan asylum-seeker, he belonged "undoubtedly to the category of the most vulnerable persons of the society" and that the Greek authorities had a positive obligation under Article 3 ECHR to take care of him through adequate measures. *Rahimi v. Greece*, *op.cit.* para.87.

[104] *Tarakhel v. Switzerland*, *op.cit*., para. 121 to 122.

dependent on State support and left in a situation of serious deprivation is incompatible with human dignity.[105]

3.4.5. *In H.A. and Others v. Greece,*[106] the Court unanimously found a violation of Article 3 on account of the conditions of the applicants' detention in police stations and in a border post and a violation of Article 13 taken together with Article 3 because of the lack of domestic remedies for the transfer to the open facility of the Diavata centre and for their detention conditions. Furthermore, for the first time the Court assessed the legality of protective custody of children seeking asylum under Article 5. The automatic application of protective custody and the impossibility to seek speedy judicial review of detention were found to be in violation of Article 5§§1 and 4.[107]

3.4.6. The ECtHR confirmed that the State's failure to verify that the detention of children, whether accompanied[108] or not,[109] was a measure of last resort and to consider less severe alternatives deemed such detention arbitrary in breach of Article 5(1) ECHR.[110] It has highlighted the positive obligations under the ECHR to limit the detention of families accompanied by children so as to preserve the right to family life.[111]

3.4.7. In *S.F. and others v. Bulgaria*, the Court underlined moreover that in view of the absolute character of Article 3 ECHR, an increasing influx of migrants cannot absolve a Contracting State of its obligations under that provision, which requires that people deprived of their liberty be guaranteed conditions compatible with respect for their human dignity. The ECtHR acknowledged that the detention was considerably shorter than the periods at issue in its previous jurisprudence (such as in *Popov v. France*), however, the detention conditions were not suitable for children even if for a brief period of time.[112]

3.4.8. The European Committee of Social Rights (ECSR), in its *Eurocef v. France* decision, asserted that "accommodating minors in common areas with adults and/or in hotels, or in so-called waiting areas is contrary to the Charter and contrary to the principle of the best interest of the child."[113] The Committee found that the lack of general measures taken by the States to ensure the special protection of children resulting in overcrowded reception facilities, lack of reception homes and minors living in the streets where they were exposed to moral and physical harm amounted to a violation of Article 7§10 of the Convention.[114] Furthermore, in its decision *DCI v. the Netherlands*, the Committee underlined that "States Parties are required, under Article 31§2 of the Revised Charter, to provide adequate shelter to children unlawfully present in their territory for as long as they are in their jurisdiction. Any other solution would run counter to the respect for their human dignity and would not take due account of the particularly vulnerable situation of children."[115]

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[105] *Ibid*., para. 98.
[106] *H.A. and others v. Greece*, no. 19951/16, ECtHR, 28 February 2019: https://www.refworld.org/cases,ECHR,5c780a0d7.html. See also UNHCR's submissions in *H.A and others v. Greece*, 30 March 2017: https://www.refworld.org/docid/58dcf3074.html.
[107] These findings have been confirmed in *Sh.D. and others v. Greece, Austria, Croatia, Hungary, Northern Macedonia, Serbia and Slovenia,* no 14165/16, ECtHR, 13 June 2019: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-193610%22]}.
[108] *Popov v. France*, *op.cit*., para. 119; *A.B. and Others v. France*, no. 11593/12, http://www.refworld.org/pdfid/5784e34e4.pdf; *R.M. and M.M. v. France* (no. 33201/11), *A.M. and Others v. France* (no. 24587/12), *R.K. v. France* (no. 68264/14) and *R.C. v. France* (no. 76491/14).
[109] *Yoh-Ekale Mwanje v. Belgium*, no. 10486/10, ECtHR, 20 December 2011, para. 124, http://www.refworld.org/pdfid/520a18c64.pdf.
[110] See *Rahimi v. Greece*, where the ECtHR held that the authorities' disregard for the principle of the best interests of the child in relation to the applicant's detention and notably the State's failure to consider any alternative to detention raised doubts about their good faith. *Rahimi v. Greece*, *op.cit.*, para. 109.
[111] *Bistieva and others v. Poland*, no. 75157/14, ECtHR, 10 April 2018; *A.B. and Others v. France*, op. cit., para. 145; R.K. and Others v. France, op. cit., para. 106; *A.M. and Others v. France*, op. cit., para. 86; and *R.C. and V.C. v. France*, op. cit., para. 72
[112] *S.F. and others v. Bulgaria*, no. 8138/16, ECtHR, 7 December 2017: https://www.refworld.org/cases,ECHR,5a2e5ecb4.html.
[113] *European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France Complaint No. 114/2015*, ECSR, 24 January 2018, para.136: https://www.refworld.org/cases,COEECSR,5b2cc7494.html.
[114] *Ibid*., para.137
[115] *Defence for Children International (DCI) v. the Netherlands*, Complaint No. 47/2008, ECSR, 20 October 2009, para. 64: https://www.refworld.org/cases,COEECSR,4b9e37ea2.html.

3.4.9. In *CEC v. the Netherlands*, the ECSR recalled that "[a]ll persons without resources, whether or not legally present in the Netherlands, have a legally recognized right to the satisfaction of basic human material need (food, clothing, shelter) in situations of emergency."[116] The Committee moreover considered the right to shelter to be closely connected to the right to life. The Committee stated that shelters must "meet health, safety and hygiene standards and, in particular, be equipped with basic amenities such as access to water and heating and sufficient lighting in order to ensure that the dignity of the persons sheltered is respected."[117]

## 4. Conclusion

4.1 Reception conditions and child protection have seen uneven improvements in Greece, as a result of multiple challenges and the need to reconcile the demands of developing a comprehensive reception system while at the same time responding to the high number of asylum-seekers and refugees who have arrived in Greece since 2015-2016. Long administrative procedures, insufficient and dire reception conditions do not take into consideration the best interests of the child and increase children's vulnerability and protection risks.

4.2 In UNHCR's view, notwithstanding a number of positive developments and efforts in Greece and in particular the improvements made in accommodation and care arrangements and the adoption of new legislation in the area of guardianship, significant gaps continue to exist. Providing child appropriate reception conditions is an essential component in ensuring children can effectively access asylum procedures in order to exercise their right to asylum as well as ensuring their dignity.

[116] The Committee held furthermore that "access to food, water, as well as to such basic amenities as a safe place to sleep and clothes fulfilling the minimum requirements for survival are necessary for the basic subsistence of any human being. See also, *Cimade, Groupe d'information et de soutien des immigrés (GISTI) v. Ministre de l'Intérieur, de l'Outre-mer, des Collectivités territoriales et de l'immigration*, c-179/11, Court of Justice of the European Union, 27 September 2012, para. 56: https://eur-lex.europa.eu/legal-content/FR/ALL/?uri=CELEX%3A62011CJ0179.

[117] *Conference of European Churches (CEC) v. the Netherlands (decisions on the merits)*, Complaint No. 90/2013, ECSR, 10 November 2014: https://www.refworld.org/cases,COEECSR,54e363534.html, para.138.