



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

20 December 2019

Case Document No. 7

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

**RESPONSE BY THE INTERNATIONAL COMMISSION OF
JURISTS (ICJ) AND EUROPEAN COUNCIL FOR REFUGEES
AND EXILES (ECRE) TO THE GOVERNMENT'S SUBMISSIONS
ON THE MERITS**

Registered at the Secretariat on 28 November 2019

Response by the International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) to the Observations of the Greek Government on the Merits of Collective Complaint 173/2018

1. Further to the letter from Mr. Kristensen dated 9 October 2019 and pursuant to the President's invitation under Rule 31 of the Rules of the European Committee of Social Rights, the International Commission of Jurists (hereinafter ICJ) and European Council for Refugees and Exiles (hereinafter ECRE) hereby submit its response to the Observations of the Greek Government on the merits of the collective complaint 173/2018 registered by the Committee on 13 September 2019.

Introductory observations

Immediate measures

2. On 23 May 2019, this Committee prescribed immediate measures to the Greek Government in the current complaint. ECRE and ICJ wish to draw the Committee's attention to the fact that more than five months following the indication of the "immediate measures" for the protection of migrant children in Greece, the measures have not been implemented by the Greek authorities. The submission by the Greek government on the merits does not include any information on measures adopted by Greece with a view to "*avoiding serious, irreparable injury to the integrity of migrant minors at immediate risk of life, physical and moral integrity,*" in particular:
 - to ensure the appointment of a guardian at the time that a separated or unaccompanied child in need of international protection is identified as well as the effective functioning of the guardianship system,
 - to ensure the use of alternatives to detention of migrant children, and to ensure in particular that unaccompanied children in police stations, pre-removal centres and Reception and Identification Centres are provided with immediate access to age-appropriate shelters,
 - to ensure access to food, water, education and appropriate shelter,
 - to ensure access to health care and medical assistance, in particular by ensuring the presence of an adequate number of medical professionals to meet the needs of the children whose rights are the subject of this complaint, and
 - ensure that all the relevant public authorities are made aware of this decision,as indicated by this Committee.
3. Recognizing the urgency of the situation of migrant children in Greece and following tragic events on Lesbos in August and September 2019,¹ ECRE and ICJ, sent two letters to the Greek authorities in June and September 2019 calling on them to implement immediate measures as indicated by this Committee and inform the complainant organisations of the outcomes.
4. Moreover, on 19 September 2019, the Greek National Commission for Human Rights (GNCHR) issued a public statement urging Greece to implement the immediate measures indicated by the

¹ UNHCR, UNHCR shocked at death of Afghan boy on Lesbos; urges transfer of unaccompanied children to safe shelters, 25 August 2019, <https://www.unhcr.org/gr/en/12705-unhcr-shocked-at-death-of-afghan-boy-on-lesvos-urges-transfer-of->

ECSR.² On 1 October 2019, the UNHCR urged the Greek Authorities “to urgently move thousands of asylum-seekers out of dangerously overcrowded reception centers on the Greek Aegean islands”.³

5. No response from the Greek authorities, to our knowledge, has been received by the organisations involved, including ECRE and ICJ.
6. Our organizations request the Committee to address this situation, as the immediate measures are inherently linked to the merits of the complaint in that they are required to ensure the effective respect of rights protected under the European Social Charter, in particular to prevent irreparable harm.⁴

The scope of the complaint

7. ECRE and ICJ recall that in November 2018 our organizations asked the European Committee of Social Rights to adopt a finding that Greece has failed to comply with its obligations under the revised European Social Charter in relation to unaccompanied and accompanied migrant children on the North Eastern Aegean Islands and unaccompanied migrant children (UAC) on the Greek mainland, and provided detailed factual information in support of this claim.

8. The term ‘children’ referred to by the complainant organisations in the present submission is based on the definition under international human rights law, in particular Article 1 of the UN Convention on the Rights of the Child (UNCRC) defining a child as everyone under the age of 18.

9. Nevertheless, the submissions on the merits by the Greek government largely focus on the situation of unaccompanied migrant children on the North Eastern Aegean islands with limited information in relation to UACs on the mainland. Information on the situation of accompanied children is mostly lacking. Moreover, information is only provided in relation to “*individuals under 15 years of age*” and data on the situation of children between 15 and 18 years is missing.

10. The information provided by the Greek government on the merits of the complaint is very generic in nature, confusing, lacking comparative data, testimonies and/or expert opinions in support of their assertions. As a result, the comments of the government have failed to dispel the submissions of ICJ and ECRE that Greece systematically fails to ensure compliance with the rights enriched by the ESC.

International obligations v difficulties in fulfilling them

11. Throughout the submissions and under section IV Conclusion, in particular, the Greek Government, reiterates that it has undertaken efforts in fulfilling the obligations under the revised Social Charter and “*challenges [...] in a given space and time, to cope with all the parameters of a very demanding and sensitive issue of human rights protection, that of unaccompanied children entering the country.*”⁵

² GNCHR, GNCHR urges the Authorities to urgently implement the immediate measures indicated by the European Committee of Social Rights with regards to migrants minors, 19 September 2019, http://www.nchr.gr/images/pdf/apofaseis/paidia/Dilosi_Asynodeutoi%20Anilikoi_Symmorfosi%20Elladas%20me%20amesa%20metra%20EEKD.pdf

³ UNHCR, Greece must act to end dangerous overcrowding in island reception centres, EU support crucial, 1 October 2019, <https://www.unhcr.org/news/briefing/2019/10/5d930c194/greece-must-act-end-dangerous-overcrowding-island-reception-centres-eu.html>.

⁴ Decision on immediate measures: Conference of European Churches (CEC) v. the Netherlands, Complaint No. 90/2013, 25 October 2013, para 1.

⁵ To illustrate, the government alleges that the Lesvos RIC Administration ensures that accommodated minors have access to a dignified standard of living through cooperation with NGOs. For example, the wings dedicated to minors are guarded on a daily

12. Given that a demanding migration crisis and the supportive role of civil society actors and international organisations provide an overarching basis for the Government's Observations, ECRE and ICJ would like to address this issue separately before commenting on each specific point that was raised by the Government. The difficulties arising from increased migratory flows that may be experienced by the Greek authorities in ensuring that Greece's international obligations are discharged must be evaluated within a wider context and with reference to specific figures and facts, as well as a body of legal jurisprudence. That context is of a long-standing migration problematic.

13. The complainant organisations recognise that, according to para. 2.1.1. of the Observations by the United Nations High Commissioner (UNHCR), as of 30 June 2019 there were some 33,500 refugee and migrant children in Greece, 3,868 of them unaccompanied. However, we would note that a high number of arrivals to Greece has been a feature for many years. For example, 309,900 people, many of whom were children, reached Greek shores between July and September 2015, but most of them travelled onwards to elsewhere in Europe.⁶ As highlighted by UNHCR (para. 2.6.3 submission) the ongoing deficiencies in the number, type and quality of care arrangements available for children in the mainland remains a serious gap for the last four years.

14. ICJ and ECRE reiterate their position advanced in the initial submission that the abovementioned developments are not recent, but are demonstrative of a systemic problem, of longstanding duration in Greece. They stand to persist if the violations identified are not recognised and addressed. For over a decade, various international authorities and civil society organisations have highlighted the dangerous shortage of accommodation, the crucial gaps in the effective protection of unaccompanied minors and a resort to systematic detention of unaccompanied migrant children as a response to such reception deficiencies.⁷

15. The European Court for Human Rights (ECtHR) has issued several judgments against Greece, finding violations of Article 3 of the Convention due to the failure of national authorities to provide asylum seekers with adequate living conditions. In the landmark case of *M.S.S. v. Belgium and Greece*, the Court in 2011 found that Greece had violated Article 3 because “*the Greek authorities have not had due regard to the applicant's vulnerability as an asylum-seeker and must be held responsible, because of their inaction, for the situation in which he has found himself for several months, living on the street, with no resources or access to sanitary facilities, and without any means of providing for his essential needs.*”

16. The Court noted “[...] *that the States which form the external borders of the European Union are currently experiencing considerable difficulties in coping with the increasing influx of migrants and asylum seekers.[...] The Court does not underestimate the burden and pressure this situation places on the States concerned, which are all the greater in the present context of economic crisis. [...] However, having regard to the absolute character of Article 3, that cannot absolve a State of its obligations under*

basis by RIC and Hellenic Police until 22:00 and by *Eurorelief* (22:00 – 0:00); *Metadrasi*, *Iliaktida* and *Better Days* NGOs on a daily basis offer Greek and English language courses; *Kitirinos Healthcare* and *Boat Refugee Foundation* offer medical services; the Safe Zone is guarded by caregivers from RIC, IOM and *Iliaktida* NGO; *Metadrasi* NGO undertake guardianship of all children under 15 (see p.p. 8- 9 submission for more examples).

⁶ UNHCR, *Desperate Journeys*, 2019: <https://data2.unhcr.org/en/documents/download/71703>

⁷ UNHCR, *Observations on Greece as a country of asylum*, December 2009, available at: <http://www.refworld.org/docid/4b4b3fc82.html>; Human Rights Watch (HRW), *Left to Survive. Systematic Failure to Protect Unaccompanied Migrant Children in Greece*, 22 December 2008, available at: <http://www.refworld.org/docid/4950a7382.html>; UNHCR, *UNHCR Position on Important Aspects of Refugee Protection in Greece*, February 2006, available at: <http://www.refworld.org/docid/46d530bf2.htm>.

that provision". Therefore it did not accept the argument of the Greek Government that it should consider these difficult circumstances as dispositive when examining the applicant's complaints under Article 3.

17. This Committee also previously underlined that where the implementation of the Charter rights proves highly complex and costly, States parties must endeavour to achieve the aims of the Charter according to a reasonable timetable, securing measurable progress and making optimum use of such resources.⁸

18. The complainant organisations reiterate that the Greek government's response to the conditions in RICs on the Greek islands has remained stagnant, despite such conditions existing there for a number of years. While recognising that the situation has been indeed particularly complex in Greece, the Greek authorities should have collected comparative data, undertaken an impact review on adequate housing, healthcare and other necessary services and planned their resources and activities accordingly. They should have also promptly improved collaboration and division of responsibilities between all responsible State stakeholders, instead of heavily relying on the limited support of civil society and international organisations for years. This would have contributed to dignified reception of vulnerable migrant children and fulfillment of their rights as guaranteed by the Charter.

19. We respectfully remind the Committee that in its Conclusions on health, social security and social protection in Greece,⁹ it was noted that Greece had not demonstrated that all persons in irregular situations could benefit from emergency social and medical assistance in Greece.

20. According to its decision in *CEC v the Netherlands*, there are more humane means to manage persons who are on the territory irregularly than by simply denying them such assistance, the primary one being to furnish necessary emergency assistance to them. This Committee also found in *DCI v the Netherlands* that "*States' immigration policy objectives and their human rights obligations would not be reconciled if children, whatever their residence status, were denied basic care and their intolerable living conditions were ignored.*"

21. The complainant organisations submit that the complex situation in Greece related to a large number of arrivals of vulnerable migrant children to Greece cannot absolve the Greek government of implementing their international obligations, including securing the social, legal and economic protection of the family unit and safeguarding the well-being and full development of children. The Greek government cannot just rely on limited services provided by civil society and international organisations, but should take a full responsibility for vulnerable migrant children under their jurisdiction.

22. The Greek government's response on the merits of this complaint is in large measure non-responsive to the issues raised in the complaint. Instead of directly addressing the allegations as to the Charter violations raised by the complainant organisations and taking responsibility for their actions and/or omissions, the Greek government has chosen to rely on generic and largely descriptive information, as well as argumentation relating to the complexity of the situation in *Greece*, without providing segregated data capable of rebutting the claims of the complainants.

⁸ *DCI v Belgium*, *op. cit.*, para. 71.

⁹ European Committee of Social Rights, Conclusions of the ECSR XXI-2 of 2017 on Greece relating to the thematic group "Health, social security and social protection", March 2018, available here: <https://www.coe.int/en/web/turin-european-social-charter/-/the-european-committee-of-social-rights-publishes-its-conclusions-xxi-2-2017-in-respect-of-greece-iceland-and-luxembourg>

Response to the specific points raised by the Greek government in its observations:

“Introductory observations” (p. 2-3 Government Observations)

23. The Greek Government asserts that protection of UAMs is a *national policy priority* of the government. It introduces its observations by claiming that all UAMs are after arrival *provided with material conditions that include housing, food and clothing and non-material reception conditions such as medical and psychological screening*. However, as described in the collective complaint itself and further elaborated in the present response, this submission is not in line with reality. Secondly, “*medical and psychological screening*” is distinct from providing access to adequate health care, including psychological care, the lack of which is a violation raised by the complainant organisations.

24. Further, the government refers to its legal framework, which “*provides that all persons residing in Greece, regardless of their or their parents’ residence status, have the right to education, including enrollment to public schools.*” However, neither the information on the actual access to education for migrant children in real, rather than abstract, terms nor even the actual numbers of children enrolled in schools is provided.

25. The Government states that “*foreign minors have full access to healthcare, regardless of their or their parents’ residence status.*” This claim is not supported by any evidence, nor statistics and does not reflect the reality of migrant children in Greece (*see pp. 37-43 collective complaint 173/2018*). The Government contends that it prioritises appropriate protected facilities for UAMs and that “*intensive efforts are made to this end.*” Specifically, the Government claims that “*places are “created” in the accommodation centers for UAMs, extension of some UAMs accommodation to semi-independent living flats, etc.*”

26. In response the complainant organizations wish to reiterate their submissions in Collective Complaint No 173/2018 referring to an extensive number of reliable sources which verify their allegations with regard to the situation of unaccompanied minors across the country, including the North-Eastern Aegean Islands and the situation of migrant minors on the North Eastern Aegean Islands (see “Part IV. Description of the problem” of the Collective Complaint). These sources corroborate the contention there is a lack of sufficient reception capacity for migrant children on the Greek islands and the lack of reception capacity for unaccompanied minors both on the Greek islands and the mainland. Moreover, these sources confirm the persisting overcrowding in the facilities on the Greek islands, shortages in basic living arrangements and medical care, and the wider protection risks that contribute to the deleterious impact of these living conditions on the migrant children’s physical and mental health. As UNHCR indicates in their submissions (para. 2.3.2) only 26% UAMs reside in long-term care, 25% are in temporary accommodation, 4 % in detention, 18% in RICs, while 27% are destitute or have found insecure and unsuitable housing solutions. Moreover, in its recent special report “Asylum, relocation and return of migrants: Time to step up action to address disparities between objectives and results”¹⁰, the European Court of Auditors concludes that the conditions for unaccompanied minors on the Greek islands are dire. The Court emphasizes that the living conditions in Greek hotspots, in particular on Lesbos and Samos, are poor owing to overcrowding, a lack of doctors and inadequate security.

27. Finally, the complainant organizations refer to the current legislation and practice, to underline the lack of procedural guarantees for unaccompanied minors across the country (non-operation of the

¹⁰ European Court of Auditors, Special report: Asylum, relocation and return of migrants: Time to step up action to address disparities between objectives and results, 2019, paras. 25 -26, 147

guardianship system and the practice of systematic detention of UAMs) and the lack of access to education for children on the Northeastern Islands (See Sections IV.3 and IV.4 of the Collective Complaint respectively).

II. “Legal framework” (p.3-4 Government Observations)

28. The complainant organisations do not have specific comments on the description of the legal framework in Greece. In the collective complaint, an overview of the available legislation has been provided, and the Greek government also referred to some of it in its response. However, we would draw this Committee’s attention to the most recent legislative developments in Greece that stand to have a significant and adverse impact on the situation of migrant children in Greece.

29. The Greek government recently introduced a draft bill¹¹ transposing and unifying EU Directives 2013/32, 2013/33 and 2011/95 under one legislative instrument. The proposed legislation was submitted for public consultation on 15 October 2019 for a period of five days, a period that effectively excludes any meaningful consultation with civil society organisations and national human rights bodies, and has been widely criticized in that regard.¹² The new Law,¹³ adopted on 1 November 2019, largely amends all existing legislation relating to asylum procedures, reception and qualification, including most of the legal provisions relied upon by the Greek government in their observations on the merits of the present complaint. More specifically, Articles 33-66 of L. 4375/2016 (transposition of Directive 2013/32) and Articles 1-24 of L. 4540/2018 (transposition of Directive 2013/33) are repealed, while the Presidential Decree 141/2013 (transposition of Directive 2011/95) is also abolished in its entirety.¹⁴

30. The Greek Ombudsman noted in his Observations on the draft bill that there are several provisions, which may complicate the protection of migrant children and hinder the implementation of existing legislation. According to his report,¹⁵ there is a concerning lack of clarity in the definitions of unaccompanied and separated children, uncertainty over the competent services and absence of any reference to the new Guardianship Law 4554/2018 and to secondary legislation setting out age assessment procedures. Most notably, Article 51 stipulates that migrant children must enroll in Greek schools within a maximum time of three months following their identification. Any failure to enroll within the prescribed time limit will result in limited provision of material reception conditions for the minor applicant. UNHCR *inter alia* underlined that “[t]he proposed changes will endanger people who need international protection” and “note[d] with concern that unaccompanied children and other vulnerable asylum-seekers could be examined under accelerated procedures” and “that some provisions may severely limit the right to family unity.”¹⁶ Despite comments during the public consultation period on the unrealistic time limit

¹¹ Draft bill on International Protection, 21 October 2019, available at: https://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=f288b988-4c33-45b4-8c18-aaed017712c5 (in Greek)

¹² Doctors without Borders – Greek department, Amnesty International – Greek department, Hellenic League for Human Rights, Greek Council for Refugees, Greek Forum of Refugees, Human Rights 360, Invitation for a joint press conference on the Draft Bill on International Protection, 29 October 2019, available at: <https://www.amnesty.gr/news/press/article/22598/prosklisi-se-koini-syntentyxi-typoy-gia-shedio-nomoy-peri-diethnoys>

¹³ L. 4636/2019, Gov. Gazette A 169/ 01.11.2019.

¹⁴ *Supra* note 1, Article 119

¹⁵ Greek Ombudsman, Observations on the Draft bill by the Minister of Citizen’s protection on International Protection, pp. 2-7, available at: <https://www.synigoros.gr/resources/30102019-paratiriseis.pdf>

¹⁶ UNHCR, UNHCR urges Greece to strengthen safeguards in draft asylum law, 24 October 2019, <https://www.unhcr.org/gr/en/13170-unhcr-urges-greece-to-strengthen-safeguards-in-draft-asylum-law.html>.

and excessively punitive character of this provision,¹⁷ none of them was taken into account in the final bill that was submitted to the Greek Parliament.

III. “As to the merits of the allegations in the complaint” (p.5-8 Government Observations)

31. On p. 5-8 of the Observations, the Government refers generally to the Reception and Identification Centers (RICs) and Reception and Identification procedures. Despite the fact that the persisting overcrowding in RICs on the islands has been widely reported and undermines by definition the ability of minors living there to access basic care arrangements and poses significant protection risks, the Observations fail to address the phenomenon. For example as of 31 October 2019, in the RIC facilities on the islands with a total nominal capacity of 6,178 places, the number of people residing there was 31,860.¹⁸ In addition, the Government fails to provide information even on the number of children among this population.

32. The complainant organizations wish to bring to the attention of the Committee new sources and evidence, complementary to the weighty material already provided in the collective complaint. In particular information from the UNHCR briefing from 1 October 2019¹⁹ and the Council of Europe Commissioner for Human Rights country visit to Greece from 31 October 2019.²⁰ The latter *inter alia* concluded:

“The situation of migrants, including asylum seekers, in the Greek Aegean islands has dramatically worsened over the past 12 months. Urgent measures are needed to address the desperate conditions in which thousands of human beings are living [...] It is an explosive situation [...] This no longer has anything to do with the reception of asylum seekers. This has become a struggle for survival. [...] Praising the strength of the asylum seekers and the solidarity of humanitarian staff and local communities who are trying to bring some measure of dignity to the camps, the Commissioner calls on the Greek authorities to take urgent measures to meet the vital needs of all these people and safeguard their human rights. If not urgently and adequately addressed, these abysmal conditions, combined with existing tensions, risk leading to further tragic events.”²¹

i. Art 7, 13, 16, 17 and 31

A. “General Framework for Reception and Accommodation Conditions at Reception and Identification Centers:”

¹⁷ See pp. 337-338 of the Explanatory Memorandum (αιτιολογική έκθεση) of the Draft Bill, available at: <https://www.hellenicparliament.gr/UserFiles/2f026f42-950c-4efc-b950-340c4fb76a24/p-diethnProstasias.pdf>

¹⁸ National Coordination Centre for Border Control, Immigration and Asylum, Situation as of 31 October 2019, available at: <https://infocrisis.gov.gr/6635/apotyposi-tis-ethnikis-ikonas-katastasis-gia-to-prosfygiko-metanasteftiko-zitima-tin-30-10-2019/> (in Greek);

¹⁹ UNHCR, Greece must act to end dangerous overcrowding in island reception centres, EU support crucial, 1 October 2019, <https://www.unhcr.org/news/briefing/2019/10/5d930c194/greece-must-act-end-dangerous-overcrowding-island-reception-centres-eu.html>

²⁰ Council of Europe, Commissioner for Human Rights, Greece must urgently transfer asylum seekers from the Aegean islands and improve living conditions in reception facilities, 31 October 2019 <https://www.coe.int/en/web/commissioner/-/greece-must-urgently-transfer-asylum-seekers-from-the-aegean-islands-and-improve-living-conditions-in-reception-facilities>

²¹ Council of Europe, Commissioner for Human Rights, Greece must urgently transfer asylum seekers from the Aegean islands and improve living conditions in reception facilities, 31 October 2019 <https://www.coe.int/en/web/commissioner/-/greece-must-urgently-transfer-asylum-seekers-from-the-aegean-islands-and-improve-living-conditions-in-reception-facilities>

“Time for the completion of reception and identification procedures” (p. 5 Government Observations)

33. The Government claims that the “*RIC are not detention centers,*” while the Government acknowledges “*the restriction of freedom of movement for 25 days, claiming its necessity (for this period of time).*” Indeed, on the basis of Art. 14 L. 4375/2016, newly arrived persons, including unaccompanied migrant children, are subject to a three-day “restriction of freedom within the premises of the centre” which can be further extended by a maximum of twenty five days if reception and identification procedures have not been completed.

34. At the time of this submission restriction of movement to RIC premises is only applied at the Evros RIC immediately upon arrival,²² while in island RICs this measure has been replaced by an island-wide geographical restriction of movement.²³

35. In addition, and whilst Article 14 sets a limit of 25 days, unaccompanied migrant children are not released after the completion of the reception and identification procedures in some RICs. On the contrary, they remain detained, for a significant period, under the authority of the reception identification service or under the pretext of “protective custody”, until they can be transferred to accommodation shelters for children (See further para 95 of the collective complaint).

36. Any detention of migrant children on the basis of the migration status is prohibited in international law (see especially the Joint CRC and CMW General comments – more details in the collective complaint section IV.3.2. Resort to Detention of Migrant Children paras 92-98).

“Provision of food services” (p. 6 Government Observations)

37. The Government indicates that “*private companies have signed contracts to provide food services at the RICs*” and refers to the content of these contracts. However, the government fails specifically to address the points raised by the complaint with regard to the lack of access to food. In the collective complaint, ICJ and ECRE have referenced credible reports, testimonies and other evidence pointing to shortages in food, and lengthy queues to get what food is provided, which may amount to several hours each time, sometimes starting as early as three am for breakfast. In addition, there is reported violence linked to lack of access to food and cases where food has been exchanged for sex (para 47 CC). The mere fact that there is an official contract with a private company to provide food does not necessarily mean that all children in question do have access to food. The impact of overcrowding in accessing food is not dealt with at all in the Government’s Observations.

38. The situation has not improved since the collective complaint has been lodged, but quite the opposite: The Commissioner for Human Rights highlighted in October 2019 that “(...) people queue for hours to get food.”²⁴

“Provision of interpretation and intercultural mediation services” (p. 6 Government Observations)

²² ECRE, AIDA report on Greece, 2018, pp. 36-37.

²³ *Ibid*, p. 30.

²⁴ Council of Europe, Commissioner for Human Rights, Greece must urgently transfer asylum seekers from the Aegean islands and improve living conditions in reception facilities, 31 October 2019, <https://www.coe.int/en/web/commissioner/-/greece-must-urgently-transfer-asylum-seekers-from-the-aegean-islands-and-improve-living-conditions-in-reception-facilities>

39. This information provided by the Government does not seem to be relevant to the current collective complaint.

**“Access to health care services, Psychosocial Support – Actions implemented within the Facilities”
(p. 6 and 7 Government Observations)**

40. The Government only mentions that there are “doctors, nurses, psychologists and social workers in RICs” – in general. It further states that “psychosocial support is provided by specialists.” The insufficient provision of medical and psychosocial services in the RICs is largely documented and is not refuted by the information provided by the Government.

41. According to the Council of Europe Commissioner on Human Rights: “There is a desperate lack of medical care and sanitation in the vastly overcrowded camps I have visited. (...) The authorities must boost the capacities of local hospitals, set up ad hoc medical facilities in the reception camps and increase the number of health care professionals in the islands in order to provide migrants and local residents with the medical care they are entitled to.”²⁵

42. UNHCR has found that: “EODY’s (National Public Health Organization) medical teams remain understaffed across the islands widening the gap in the process of medical registration, vulnerability assessment as well as primary and mental healthcare. The lack of psychologists and interpreters make it difficult to detect and provide care to asylum-seekers who suffer from non-obvious vulnerabilities, as for instance people who have survived torture.”²⁶

43. UNHCR also highlights in its submissions that critical gaps in the provision of medical and psychosocial support services that leave children, in particular UAM, exposed to high safety and protection risks (para. 2.4.1). To illustrate, the majority of UAM spend more than two-and-a-half months without targeted medical and psychosocial support services in Lesbos RIC (para. 2.4.8) and children, who end up in the Fylakio RIC in Evros spend up to three to five months restricted in a facility without adequate medical and psychosocial services (para. 2.4.10).

“Care for the female population” (p. 6 Government Observations)

44. The Government states that “in RICs special care is provided for the protection and support to women who are single (unaccompanied) and heads of single parent families or women with other types of vulnerability.” It further mentions that “in **almost** all hosting areas provision was made for separate protected areas.” The Government completely fails to address many core issues raised by the collective complaint, such as the impact of overcrowding, lack of security and hygiene, lack of gender separated areas.

45. For instance para 45 of the collective complaint has outlined the situation in the Vathy RIC on Samos. There, “overcrowding persists in the centre where some 1,500 people do not have access to safe shelter, appropriate hygiene facilities and gender-separated areas. Some 400 people, including vulnerable, women and children, live in tents or makeshift shelters.” As MSF reports “there was no

²⁵ <https://www.coe.int/en/web/commissioner/-/greece-must-urgently-transfer-asylum-seekers-from-the-aegean-islands-and-improve-living-conditions-in-reception-facilities>

²⁶ <https://data2.unhcr.org/en/documents/download/71310> p.5.

segregation between men, women and children” and “the system for screening and identifying vulnerable people broke down and people were unable to access healthcare for days or longer, despite severe health conditions.” Despite the recent transfer of some 640 people to the mainland from the island, more than 1,900 people remain crammed into an area meant for 700 at the Reception and Identification Centre (RIC) in Vathy. Among them there are more than 600 children as well as pregnant women, serious medical cases and people with disabilities. (para 48 CC). Moreover, on para. 2.4.7 of their submissions, UNHCR illustrate the situation of girls in Vathy RIC in Samos, where 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.

46. The situation has not improved since the period covered by the complaint. *“Prevention and response to SGBV incidents, including domestic violence, is increasingly challenging in the island hotspots. Poor lighting, overcrowding and the few lockable facilities create precarious conditions especially for women and unaccompanied boys and girls. Single women and mothers in the islands reception centres face serious security risks as they often have to sleep in pop-up tents or in the open-air.”*²⁷

Facilities (p.7 Government Observations)

47. The government mentions *“continuous upgrading of facilities”* – without giving specific examples, nor addressing any of the specific shortcomings identified in the collective complaint.

Movements (p.7-8 Government Observations)

48. The government contends that *the RIS makes every effort to speed up procedures to ensure transfer of TCNs to the mainland (...)*. However, UNHCR and other actors underline that there is urgent need to speed up transfers to the mainland.²⁸ In addition, the Government does not respond to the issues related to the lack of these transfers, such as overcrowding, and lack of hygiene, security, access to food, health care or education in the reception places in the islands.

Reception and identification conditions for unaccompanied children (p.8-11 Government Observations)

49. The government further describes on page 8 that *“At facilities managed by the RIS, accommodation, protection and support to unaccompanied children is offered in separated delimited zone of each Facility (safe zone), close to the remaining psychosocial services and educational areas and away from the general population. Unaccompanied children leave alone in small houses opposite the special area prepared to meet their needs for psychological support. Food and necessary items are distributed to them separately while care and protection is offered by specialized personnel on a 24-hour-per-day basis.”* Further on, the government purports to describe reception and identification “conditions” for UAMS at RICs. It seems that the government merely cites the existing legal framework, describing procedural steps without any reference to – and evidence of – how this framework is applied in practice.

²⁷ UNHCR, Factsheet: Greece, 1-31 August 2019, p 4.

²⁸ *“(…) urgent steps are needed and we urge the Greek authorities to fast-track plans to transfer over 5,000 asylum-seekers already authorized to continue their asylum procedure on the mainland. In parallel, new accommodation places must be provided to prevent pressure from the islands spilling over into mainland Greece, where most sites are operating at capacity”* See <https://www.unhcr.org/news/briefing/2019/10/5d930c194/greece-must-act-end-dangerous-overcrowding-island-reception-centres-eu.html>. See also: Council of Europe, Commissioner for Human Rights: *“Greece must urgently transfer asylum seekers from the Aegean islands and improve living conditions in reception facilities”*, <https://www.coe.int/en/web/commissioner/-/greece-must-urgently-transfer-asylum-seekers-from-the-aegean-islands-and-improve-living-conditions-in-reception-facilities>, See also: 2.4.3 and 2.6.2 of UNHCR submissions in the present complaint.

50. In any case, these generic and abstract observations are not in line with the actual situation, as documented in the collective complaint. Apart from the “description of the problem” section in the collective complaint, we would refer to the account of the of the situation in the UNCHR submission in the present case, describing the accommodation conditions in the RICs as largely sub-standard due to shortcomings in available services. The UNHCR highlights overcrowding and very poor material conditions (Water, Sanitation & Hygiene, shelter) and critical gaps in the provision of medical and psychosocial support services. The UNHCR concludes that these conditions leave children, in particular UAC, exposed to high safety and protection risks. UNHCR further points out that 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.²⁹

51. UNHCR has stated that: “*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.*”³⁰

52. According to reports, compiled following monitoring conducted by UNHCR field staff on the islands, the care and protection situation in those RICs for UAM is seriously sub-standard or fully lacking, with the worst conditions prevailing in the RICs of Samos and Lesvos (...).³¹ Similarly, the European Court of Auditors emphasized that two key recommendations made following their visit in 2017 still need to be implemented. These include addressing the hotspot capacity and the situation of unaccompanied minors in the Greek hotspots as the latter “*remains highly critical.*”³²

Observations on the situation of specific RICs (p. 9-11 Government Observations)

53. Lesvos and Samos RIC are the only places referred to in the government’s observations. However, the Collective Complaint refers to the situation in *all* Reception and Identification Centers in Greece, i.e. the 5 RICs at the Aegean Islands - Lesvos (Moria), Samos, Kos, Leros, Chios - and the Evros RIC close to the Greek Turkish land borders.

Regarding the Lesvos RIC:

54. In its Observations the Government mentions that “*according to our latest information from the Lesvos RIC Administration, 346 unaccompanied children are accommodated at the center – 114 at the Wind A, 124 at the Wind B, 43 at the Safe Zone, 15 of which are girls, 43 at the Tent for New Commers*

²⁹ UNHCR, Submission by the Office of the United Nations High Commissioner for Refugees in the case of International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece (Complaint No. 173/2018) before the European Committee of Social Rights, 2.4.1, see: <https://rm.coe.int/cc173casedoc5-en-observations-by-the-unhcr/168096c416>. For more detail, see also 2.4.2 of the UNHCR submission.

³⁰ “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.” UNHCR, Submission by the Office of the United Nations High Commissioner for Refugees in the case of International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece (Complaint No. 173/2018) before the European Committee of Social Rights, 2.4.4, see: <https://rm.coe.int/cc173casedoc5-en-observations-by-the-unhcr/168096c416>

³¹ UNHCR, Submission by the Office of the United Nations High Commissioner for Refugees in the case of International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece (Complaint No. 173/2018) before the European Committee of Social Rights, 2.4.5, see: <https://rm.coe.int/cc173casedoc5-en-observations-by-the-unhcr/168096c416>

³² European Court of Auditors, Special report: Asylum, relocation and return of migrants: Time to step up action to address disparities between objectives and results, 2019, para. 147

where they stay temporarily for a period of less than one month and 1 at the main area of the center together with a relative until the procedures for the child's custody are finalized” (see p. 9, 1st paragraph and footnote 9). No specific date is provided for this information. Moreover according to the Observations “the above mentioned areas are designated in such a way to protect children the best possible living conditions [...] for the short time period during which children must stay in the RIC until the procedures for their identification, the medical checkup to determine their age, if necessary are finalized and of course until the decision is forward to the RIC for their placement in a proper accommodation facility or their transfer to another European country based on the Dublin III Regulation. As regards children who will be placed at accommodation facilities through EKKA, the said time period ranges from two to three months, while for children who wish to reunified with their relatives in Europe, almost twelve months are needed due to bureaucracy between the services involved. Obviously, these children do not stay at the RIC thought out the entire above period” (see p. 9, 2nd paragraph).

55. The Observations of the Government with regard the house arrangement of UAMs in Moria RIC are not corroborated by reliable sources, as these make it clear that a significant number of UAMs have not benefited from an accommodation place in a safe area. Government Observations state that the area is “designated in such a way to provide children the best possible living conditions” and that they remain there “for the short time period during” and for “period ranges from two to three months. ” This information has been contradicted by sources cited in the collective complaint nor by the UNHCR most recently (see below).

56. Further evidence is provided by the UNHCR Submission in the current case: “In Lesbos, 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.” (...) “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.”³³

57. In addition, “[f]rustration and tensions can easily boil over in Moria RIC which now hosts over 8,500 refugees and migrants – four times its capacity. Access to services such as health and psychological support are limited while security is woefully insufficient for the number of people. Unaccompanied children especially can face unsafe conditions for months while waiting for an authorized transfer to appropriate shelter. Their prolonged stay in such difficult conditions further affects their psychology and well-being.”³⁴

³³ UNHCR, Submission by the Office of the United Nations High Commissioner for Refugees in the case of International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece (Complaint No. 173/2018) before the European Committee of Social Rights, 2.4.8 and 2.4.2, see: <https://rm.coe.int/cc173casedoc5-en-observations-by-the-unhcr/168096c416>

³⁴ UNHCR, UNHCR shocked at death of Afghan boy on Lesbos; urges transfer of unaccompanied children to safe shelters, 25 August 2019,

58. The spike in arrivals during the summer of 2019³⁵ has been followed by further deterioration in the conditions of UAMs in Lesvos RIC. On 25 August 2019, as reported by UNHCR: *“The safe area at the Moria Reception and Identification Centre, RIC, hosts nearly 70 unaccompanied children, but more than 500 other boys and girls are staying in various parts of the overcrowded facility without a guardian and exposed to exploitation and abuse. Some of them are accommodated with unknown adults.”*³⁶

59. As reported further on 14 October 2019, “Conditions have become grim at the Moria reception centre for asylum seekers, which now hosts 12,800 people – five times the capacity it was designed for – in containers and tents inside the centre and at an adjacent olive grove. Nearly 1,000 children, most of them teens, live in Moria without parents or relatives. Half are housed in four protected sections marked A through D and a Safe Zone, but the rest sleep in a tent-like warehouse, known as a Rubb Hall, where adult asylum seekers also stay.”³⁷

60. Conditions in the “safe zone” area of Moria RIC and in other wings dedicated for UAMs are also particularly worrying. On 24 August 2019, in Moria’s safe zone, a 15-year-old Afghan boy was killed and two other teenage boys injured after a fight broke out.³⁸

61. Information has also been gathered by UNICEF. On 29 August 2019 UNICEF has released a short film documenting the dreams and despair of boys staying in “Section B,” an area meant to provide specialized protection for unaccompanied children in the Reception and Identification Centre in Moria, on the Greek island of Lesvos. [...] *“I think day by day they lost their minds,”* a boy says about other boys in ‘Section B.’ *“Because of that, sometimes they cut their hands. I don’t want to be like that.”* The film shows staff who are dedicated to the care and protection of the children, yet they are exhausted and overwhelmed. Services are overstretched, and children remain at risk of violence and abuse with limited access to school, health care and psychosocial support. Children often remain in ‘Section-B’ longer than the 25-day maximum stipulated by Greek law because there is reportedly a lack of vacant and suitable accommodation on the Greek mainland. The Reception Centre in Moria is meant to accommodate 3,000 people, but currently has more than 8,700, including 3,000 children. ‘Section B,’ including the adjacent area, has room for 160 unaccompanied children, but now has more than 520.³⁹

62. Regarding children in Moria RIC, the Government mentions that *“The RIC administration ensures that accommodated minors have access also to other provisions that ensure a dignified standard of living, in accordance with the law. More specifically, children have access to education and recreation activities in cooperation with NGOs that operate within the RIC”* (p. 9 Government Observations).

63. The Government submission contradicts the reality of the actual situation, as evidenced by reports referenced in the collective complaint, the present observations and the UNHCR submission in the present case: *“Access to recreational and informal educational activities on the islands remains limited*

³⁵ See UNHCR, Factsheet: Greece, 1-31 August 2019, “Refugee flows increased by 60 per cent this month”.

³⁶ UNHCR, UNHCR shocked at death of Afghan boy on Lesvos; urges transfer of unaccompanied children to safe shelters, 25 August 2019, <https://www.unhcr.org/gr/en/12705-unhcr-shocked-at-death-of-afghan-boy-on-lesvos-urges-transfer-of-unaccompanied-children-to-safe-shelters.html>.

³⁷ UNHCR, Lone children face insecurity on Greek island, 14 October 2019, <https://www.unhcr.org/news/stories/2019/10/5da059144/lone-children-face-insecurity-greek-island.html>.

³⁸ UNHCR, UNHCR shocked at death of Afghan boy on Lesvos; urges transfer of unaccompanied children to safe shelters, 25 August 2019; Kathimerini, 15-year-old Afghan kills compatriot at refugee camp, 25 August 2019, <http://www.ekathimerini.com/243886/article/ekathimerini/news/15-year-old-afghan-kills-compatriot-at-refugee-camp>.

³⁹ UNICEF, More than 1,100 unaccompanied refugee and migrant children in Greece need urgent shelter and protection, 29 August 2019, <https://www.unicef.org/press-releases/more-1100-unaccompanied-refugee-and-migrant-children-greece-need-urgent-shelter-and>.

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 Lesbos have no access to formal education.”⁴⁰

Children accompanied by their family/family members (P. 10 *in fine*- P. 11 Government Observations)

64. Pages 10 *in fine* – 11 is the only part of the Observation where the Government refers to the living conditions of minors accompanied by their family/family member in RICs. This concerns the case of children with families living in Moria RIC. According to the Observations of the Government “*Children living with their families are offered the same education and recreational activities mentioned above for the unaccompanied children. They are accommodated either in ISOBOX type container or in big tents suitable for winter that are equipped with a floor, waterproof cover and heating, and with internal partitions ensuring the privacy of family life. Unfortunately, a number of families build makeshift accommodation outside the Center in order to have more space. These are constantly removed by RIC personnel since they are dangerous not only for their safety but for the safety of other structures. As this point we have to mention that now the Center is equipped with a large number of shared toilets and showers with hot water sufficient enough to accommodate the 5,150 people who live inside the Center.*”

65. According to the official data, the capacity of Moria RIC is of 3,000 places.⁴¹ Thus, a population of 5,150 residents in Moria RIC –as indicated by the Government’s Observations- already constitutes significant overcrowding. Moreover, it is not clear as to which time period data provided by the Government refer. For example on 13 September 2019, i.e. the day that the Government’s Observations were registered at the Registry of the ECSR, the population in Moria RIC was of 10,537 persons, according to the official data.⁴² As extensively documented, severe and constant overcrowding persists in Moria RIC and the total population residing there exceeds by far RICs capacity.⁴³ Thus, it is due to this overcrowding, leading to an absolute lack of available accommodation places, that applicants, including families with children, in Moria RIC are obliged to remain around the facility in makeshift accommodations and exposed to significant protection risks and not “*in order to have more space*”. Despite the very real lack of accommodation capacity in the Moria RIC, the Government has wholly failed to explain in its Observations where people are being accommodated following the “constant removal” of their makeshift structures. Similarly, the vague reference to a “large number of shared toilets and showers” that are sufficient enough for 5,150 people does not serve to dispel very recent concerns

⁴⁰ UNHCR, Submission by the Office of the United Nations High Commissioner for Refugees in the case of International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece (Complaint No. 173/2018) before the European Committee of Social Rights, 2.4.4, see: <https://rm.coe.int/cc173casedoc5-en-observations-by-the-unhcr/168096c416>

⁴¹ National Coordination Centre for Border Control, Immigration and Asylum, Situation as of 13 September 2019, available at: <https://infocrisis.gov.gr/6019/yp-prostasias-tou-politi-apatyposi-tis-ethnikis-ikonas-katastasis-gia-to-prosfygiko-metanasteftiko-zitima-tin-13-9-2019/> (in Greek).

⁴² National Coordination Centre for Border Control, Immigration and Asylum, Situation as of 13 September 2019, available at: <https://infocrisis.gov.gr/6019/yp-prostasias-tou-politi-apatyposi-tis-ethnikis-ikonas-katastasis-gia-to-prosfygiko-metanasteftiko-zitima-tin-13-9-2019/> (in Greek).

⁴³ UNHCR, Factsheet: Greece, 1-31 August 2019, “Samos (4,197), Lesbos (10,300) and Kos (2,481) operate six, five and four times above their estimated capacity of 700, 2,150 and 700 respectively. Thousands stay in rickety tents with inadequate access to sanitation”.

over sanitary conditions that “have been described by aid groups “horrendous,” with over 100 people sharing one toilet.”⁴⁴

Regarding the Samos RIC:

66. The only information provided on the Samos RIC refers to the decision to transfer the RIC to another location, which in any case has not taken place yet; the number of transfers for Samos RIC during the last months; and the replacement of old houses the number of which is not specified. Moreover, and according to the Observations, “a safe zone project is implemented for unaccompanied children”. No information is provided for children accompanied by their family/family members.

67. However, UNHCR reported with regard to Samos in their submission in this case: “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.”⁴⁵

68. In October UNHCR added: “On Samos, the Vathy reception centre houses 5,500 people – eight times its capacity. Most sleep in tents with little access to latrines, clean water, or medical care [...] On Samos, more than a dozen unaccompanied girls take turns to sleep in a small container, while other children are forced to sleep on container roofs.”⁴⁶ “At the Vathy centre on Samos island, (...) unaccompanied children can live in unsafe conditions for months while waiting for an authorized transfer to shelters and it affects them mentally and physically.”⁴⁷

69. The UNHCR Representative in Greece, following his visit to the Dodecanese islands, indicated: “Conditions remain dire, due to overcrowding, particularly on Samos, and thousands of people, including families with young children, remain exposed to a number of risks. The situation is particularly alarming for the 810 unaccompanied children in the RICs, as they have no access to adequate care and security.”⁴⁸

70. The Commissioner for Human Rights said on 31 October 2019: “On Samos, families are chipping away at rocks to make some space on steep hillsides to set up their makeshift shelters, often made from

⁴⁴ Reuters, 'Moria is hell': asylum seekers protest conditions at Greek camp, 1 October 2019, available at: <https://www.reuters.com/article/us-europe-migrants-greece-lesbos-protest/moria-is-hell-asylum-seekers-protest-conditions-at-greek-camp-idUSKBN1WG3W7>

⁴⁵ UNHCR, Submission by the Office of the United Nations High Commissioner for Refugees in the case of International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece (Complaint No. 173/2018) before the European Committee of Social Rights, 2.4.7.

⁴⁶ UNHCR, Greece must act to end dangerous overcrowding in island reception centres, EU support crucial, 1 October 2019 <https://www.unhcr.org/news/briefing/2019/10/5d930c194/greece-must-act-end-dangerous-overcrowding-island-reception-centres-eu.html>

⁴⁷ UNHCR, Lone children face insecurity on Greek island, 14 October 2019, <https://www.unhcr.org/news/stories/2019/10/5da059144/lone-children-face-insecurity-greek-island.html>

⁴⁸ UNHCR, UNHCR Representative in Greece visits the Dodecanese, 19 August 2019, <https://www.unhcr.org/gr/en/12675-unhcr-representative-in-greece-visits-the-dodecanese.html>

trees they cut themselves. This no longer has anything to do with the reception of asylum seekers. This has become a struggle for survival.”⁴⁹

71. Finally, the Government Observations do not refer to the conditions in RICs facilities in Kos, Chios and Leros island and Evros RIC and the particular situation of migrant children, including UAMin those locations. For example, the capacity/occupancy rate in Kos, Chios and Leros RICs is as follows:

RIC Location		Capacity	occupancy
		13 September 2019	30 October 2019
Kos	816	2610	3733
Chios	1014	3218	4958
Leros	860	1330	2276

Regarding the Evros RIC

72. The UNHCR Submission in this complaint also gives more recent data on Evros RIC: *“The Fylakio RIC in Evros operates as a closed facility 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, 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.”*⁵⁰

B. “Guardianship for unaccompanied children” (p. 11- 13 Government observations)

73. On p. 11-13, the Government refers mainly to the adoption of L. 4554/2018 issued on 18 July 2018. The complainant organizations have previously welcomed this development (see Collective Complaint No 173/2018, para 91). ICJ and ECRE also welcome the adoption of secondary legislation needed (p. 12 of the Observations), by noting at the same time that this has been adopted one year after the issuance of the law. However, in practice the guardianship system under Law 4554/2018 has not yet

⁴⁹ Council of Europe, Commissioner for Human Rights, Greece must urgently transfer asylum seekers from the Aegean islands and improve living conditions in reception facilities, 31 October 2019 <https://www.coe.int/en/web/commissioner/-/greece-must-urgently-transfer-asylum-seekers-from-the-aegean-islands-and-improve-living-conditions-in-reception-facilities>

⁵⁰ UNHCR, Submission by the Office of the United Nations High Commissioner for Refugees in the case of International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece (Complaint No. 173/2018) before the European Committee of Social Rights, 2.4.10.

become operational, as the entry into force of the new Guardianship Law has been postponed twice since its adoption. As the Government also notes (p. 12), it is currently set to enter into force on 1 March 2020.

74. According to the initial version of L. 4554/2018 (Art. 32), the Guardianship Law should have entered into force at the time that the Ministerial Decision approving the Rules of Procedure of the Supervision Board provided by Art. 19(6) L. 4554/2018 would be issued. Following an amendment introduced in May 2019 (Art. 85(2) L. 4611/2019, Gov. Gazette A 73/17.5.2019), the entry into force of L. 4554/2018 has been postponed until 1 September 2019. In August 2018 (Art. 73 (1) L. 4623/2019, Gov. Gazette A 134/9.8.2019) the entry into force of L. 4554/2018 has been further postponed until 1 March 2020.

75. Thus, up to the time of this submission, there has been no effective guardianship system available for unaccompanied minors in Greece and unaccompanied and separated migrant children are still deprived of the guarantees and protection that a guardianship system would bring.

76. Moreover, the “*transitional program*” mentioned by the Government (p. 13 of the Observations) cannot fill the gap of the non-operation of a Guardianship system. This program refers to the appointment of an “Authorized Representative” to a limited number of UAMs (1,600 according to the Government,⁵¹ 1,100 according to UNHCR).⁵² As indicated by the Government itself, (see p. 13 of the Observations): “*these persons do not have the responsibilities of a guardian.*”⁵³

77. As long as the entry into force of L. 4554/2018 is pending, the existing legislative framework does not guarantee the operation of an effective guardianship system. Law 4540/2018 repealed PD 220/2007 but maintained its Article 19 (1), which concerns temporary guardianship by prosecutorial authorities and has been repeatedly criticized as ineffective (see Collective Complaint No 173/2018, para 88). See also the UNHCR submission in the current complaint:

“2.8.2. (...) *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, “2.8.3. (...) *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 [...]*”

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.*

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*

⁵¹ See p. 13 of the Observations.

⁵² See UNHCR, Submission by the Office of the United Nations High Commissioner for Refugees in the case of International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece (Complaint No. 173/2018) before the European Committee of Social Rights, § 2.8.6 (p. 12).

⁵³ National Center for Social Solidarity, Situation Update: Unaccompanied Children (UAC) in Greece, 30 September 2019, <https://data2.unhcr.org/en/documents/download/71629>; National Center for Social Solidarity, Situation Update: Unaccompanied Children (UAC) in Greece, 31 August 2019, <https://data2.unhcr.org/en/documents/download/71285>: “4616 UAMs present in Greece as of 30 September 2019; 4393 UAMs present in Greece as of 31 August 2019”

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).”⁵⁴

C. “As regards accommodation places for UAMs” (p. 14 Government Observations)

78. The Government only refers to the existing reception capacity for UAMS in long-term accommodation (Shelters/SIL) and temporary accommodation in emergency hotels. The Government does not refer to the fact that due to the significant shortage of the total UAMs reception capacity, a significant number of UAMs remain homeless, in detention or in the absolutely inadequate RIC facilities.

79. The data provided as of 31 August 2019 indicates:

- 4,393 UAMs present in Greece as of 31 August 2019, out of which
- 1,777 children in long term or temporary accommodation
- 1,142 children in RICs
- 250 children in “protective custody”
- 134 children in open temporary accommodation facilities
- 1,090 children in insecure housing conditions.⁵⁵

80. As UNHCR states: *“in Greece, only one in four has a place in a shelter and many of the 4,393 children who are alone are exposed to risks, including sexual violence and homelessness (EKKA data). Arrangements for unaccompanied children in the reception centres remain woefully inadequate and the grim living conditions further exacerbate the wellbeing of 1,182 unaccompanied or separated children in the reception centres who often have limited options but to share their space with adults until they get transferred to a shelter appropriate for their age and needs.”⁵⁶*

ii. “As regards the right to education for children and young people / unaccompanied minors (art 17 para 2 of the Revised ESC)” (p. 15 -17 Government Observations)

81. The Government Observations provide information on the legal framework, institutional measures taken , for example the creation of reception units for the education of refugee children (DYEP) and general statistics with regards to school attendance across the country.

82. The Collective Complaint 173/2018, however, refers to the specific issue of access to education for migrant children on the Greek Islands (paras 213-222). The Government fails to provide any specific data and information within that scope. For instance, there is a lack of any indication as to the percentage of school attendance on the North-eastern Aegean islands for migrant children or number of DYEP on the islands.

83. The issues raised by the collective complaint are further and most recently confirmed by UNHCR: “More than three quarters of the 4,656 school-aged children on the Greek islands who are asylum seekers

⁵⁴ UNHCR, Submission by the Office of the United Nations High Commissioner for Refugees in the case of International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece (Complaint No. 173/2018) before the European Committee of Social Rights, 2.8.2-2.8.5.

⁵⁵ National Center for Social Solidarity, Situation Update: Unaccompanied Children (UAC) in Greece, 31 August 2019, <https://data2.unhcr.org/en/documents/download/71285>

⁵⁶ As of 30 September 2019, see <https://data2.unhcr.org/en/documents/download/71629>, UNHCR, Factsheet: Greece, 1-31 August 2019, <https://data2.unhcr.org/en/documents/download/71310>

and live in reception centres do not attend school.”⁵⁷ “[...] 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 Lesbos have no access to formal education.”⁵⁸

iii. “As regards the right to health protection for UAMs/minors (Art 11 of the Revised ESC)” (p. 17–22 Government Observations)

84. Except for an overview of the general legal framework relating to healthcare in Greece and a general remark that “*a large part of the population trapped in the country is being hospitalized, receiving primary health care, public health services, is being offered vaccination, psychological support, first aid, emergency care and medical transfers [...]*”, no specific data is provided in relation to the number of children under age of 18 both accompanied and unaccompanied, who requested medical assistance and were able and/or unable to access it. Data on the type of assistance, waiting time is neither provided both with regard to the mainland and the islands. The reference is only being made to the programs PHILOS (August 2017 – August 2018) and PHILOS II that runs at present; as well as the number of staff trained. Further, on p. 20, *section PHILOS staff on islands*, the government has included some general statistics by EKEPY.

85. However, PHILOS only started at the entry points into the islands of Lesbos, Kos, Chios, Samos and Leros as of August 2017, and whether any health care services were available before is unclear. Moreover, the information on vaccination and incoming cases in public health services on p. 20 only provides some statistics in relation to “*persons of 15 years of age*” purportedly throughout Greece. No information is available in relation to children between 15 and 18. Furthermore, it is also unclear whether the 2017 and 2018 statistics in relation to the healthcare provided by the hospitals on the North Eastern Aegean islands relates to all children under 18 or only children under 15.

86. The insufficient access to healthcare services is widely documented and data provided by the Government do not refute these findings. In fact, and as the Government acknowledges “*the response to the urgent healthcare needs of refugees and immigrants is a challenge for the healthcare system that does not have sufficient resources and staff and is already overwhelmed.*” (p. 18)

87. This has been further confirmed by UNHCR in their periodical Factsheets throughout the past year: “Disruptions in the provision and staffing of medical and psychosocial services renders the situation very challenging, especially for people on the islands and some mainland camps where there is no EODY presence.”⁵⁹ “Asylum-seekers and refugees on the islands face severe challenges in medical screening and health provision as the EODY medical teams are understaffed. On Chios this has affected the conduction of vulnerability assessment with at least 500 pending cases”.⁶⁰ “In many locations, access to healthcare is problematic due to the limited capacity of EODY to cover interpretation needs at the local

⁵⁷ UNHCR, Stepping Up. Refugee Education in Crisis, August 2019, <https://www.unhcr.org/steppingup/wp-content/uploads/sites/76/2019/09/Education-Report-2019-Final-web-9.pdf>, pp. 20-21

⁵⁸ UNHCR, Submission by the Office of the United Nations High Commissioner for Refugees in the case of International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece (Complaint No. 173/2018) before the European Committee of Social Rights. 2.4.4.

⁵⁹ UNHCR Factsheet: Greece, 1-30 April 2019, <https://data2.unhcr.org/en/documents/download/69780>

⁶⁰ UNHCR Factsheet: Greece, 1-31 May 2019, <https://data2.unhcr.org/en/documents/download/70066>

hospitals.”⁶¹ “EODY’s medical teams remain understaffed across the islands widening the gap in the process of medical registration, vulnerability assessment as well as primary and mental healthcare.”⁶²

88. Moreover, the Government raises in their Observations (p.18) that “*the health needs of these vulnerable groups [accompanied refugee children and immigrants] are fully covered by the public health system... they have the right to access and the rights to full nursing and medical care and they are also given a registered Social Security Number (AMKA).*” This assertion is in stark contrast with the recent comments by the Commissioner for Human Rights of the Council of Europe, that “[*t*]he authorities must boost the capacities of local hospitals, set up ad hoc medical facilities in the reception camps and increase the number of health care professionals in the islands in order to provide migrants and local residents with the medical care they are entitled to.”⁶³

89. Similarly, the Greek Ombudsman highlighted in his report on the situation of children on the move in Greece that the capacity of healthcare facilities on the islands “*effectively precludes access to health services*” with an “*exceptionally adverse impact*” on the population.⁶⁴ Assessing the access to healthcare of children residing in RICs, the Ombudsman criticized the lack of psychiatric care for children,⁶⁵ the absence of pediatricians and child psychologists “*despite the fact that 1/3 of [medical] incidents concerns children;*” and the exhaustion of any child-focus care in mass vaccinations.⁶⁶ Moreover, in addition to limited resources/staff of national healthcare system, access to health care is further hindered by administrative obstacles in issuing a Social Security Number (AMKA).

90. AMKA is a prerequisite for accessing such services. As is the case in respect of the overall asylum seeking population, migrant children accompanied by their families and UAMs, face longstanding administrative obstacles in issuing AMKA.⁶⁷ More recently, in July 2019, the revocation of previous Circulars regulating the issuance of a social insurance number for asylum seekers effectively barred asylum applicants, including minors, from accessing healthcare. As noted by UNHCR in August 2019, “[*t*]he persisting freeze in issuing social security numbers (AMKA) impacts negatively access to healthcare, welfare and social services, including those who need treatment for chronic or grave diseases.”⁶⁸

91. On 10 September 2019, the Greek Ombudsman, in a letter addressed to the authorities, underlined “*the lack of access to healthcare services of asylum seekers, foreigners and in particular minors (accompanied or unaccompanied)*”, and called for effective measures to be adopted to address this deficiency.⁶⁹ However, the issuance of social security numbers for asylum seekers, including minors, has

⁶¹ UNHCR Factsheet: Greece, 1-31 July 2019, <https://data2.unhcr.org/en/documents/download/70066>

⁶² UNHCR, Factsheet: Greece, 1 -31 August 2019, <https://data2.unhcr.org/en/documents/download/71310>

⁶³ Council of Europe, Commissioner for Human Rights, Greece must urgently transfer asylum seekers from the Aegean islands and improve living conditions in reception facilities, 31 October 2019
<https://www.coe.int/en/web/commissioner/-/greece-must-urgently-transfer-asylum-seekers-from-the-aegean-islands-and-improve-living-conditions-in-reception-facilities>

⁶⁴ Greek Ombudsman, The Rights of Children on the Move in Greece, 14 June 2019, p. 92 available in Greek at: <https://www.synigoros.gr/?i=childrens-rights.el.epanapatriamos.577323>

⁶⁵ *Ibid*, p. 93.

⁶⁶ *Ibid*, p. 89.

⁶⁷ Joint Report of 25 Organizations for Cases of Violation of Asylum Seekers’ Rights, August 2017, available at: <https://www.solidaritynow.org/en/joint-report-25-organizations-cases-violation-asylum-seekers-rights/>.

⁶⁸ UNHCR, Factsheet: Greece, 1-31 August 2019, p.5.

⁶⁹ Greek Ombudsman, Issues regarding the social insurance number (AMKA) and relevant obstacles in accessing labour market, social security and health services for asylum seekers and minors, 10 September 2019, <https://www.synigoros.gr/?i=kdet.el.news.596370> (in Greek).

not been addressed so far. A new Circular, issued on 1 October 2019, provided clarifications as to the issuance of social security numbers,⁷⁰ but explicitly excluded asylum seekers, including minors, from its scope. Thus, accompanied and unaccompanied migrant children continue to face administrative obstacles excluding them from effective access to healthcare services.

“Vulnerability assessment at RICs” (p. 19-20 of the Government Observations)

92. The Government mentions the development of a vulnerability assessment protocol, *“a template intended to help employees effectively identify and refer the individuals in need of protection.”* However in practice, as reported for instance by UNHCR in their submission in the current complaint: *“[...]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) 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.”*⁷¹

“PHILOS staff in the islands” (p. 18-19 and 21 Government Observations)

93. In its Observations, the Government mentions that *“from August 2017 until 19/08/2018, the main action of the Ministry of Health for dealing with the health and psychosocial needs of the refugee population was the PHILOS program, an “Integrated Emergency health Intervention for the Refugee Crisis. The implementation of the PHILOS II program was assigned to the Centre for Diseases Control and prevention (KEELPNO) and the program is currently entering its second phase of implementation.”* It further describes its goals and activities and that the population *“had access to first aid through 25 medical posts and to referral services with eight mobile units.”*

94. The system has however been ineffective. It has been criticized by RSA-Pro Asyl in the following terms: *“The Comprehensive Emergency Health Response to Refugee Crisis” aka PHILOS project was engineered in order to support Greece’s public health system structures that mostly undertook the burden of the refugee crisis as well as provide primary healthcare and mental health support services within camps in the mainland and Reception and Identification Centers (RICs) on the islands [...]. From early on the project’s capacity in deploying personnel has been seriously hampered mostly by the unattractive compensation scheme KEELPNO was able to offer to doctors and nurses, as well as auxiliary staff due to financial as well as bureaucratic constraints. Throughout the implementation of the first phase of the project, KEELPNO made repeated efforts to hire more people while the dropout rate was also significant. Implementation suffered constant gaps with the project not managing to deploy the entire human resources planned.”*⁷²

95. The FRA update from February 2019 indicates: *“Some 30 % of the asylum seekers and refugee population living in the five islands are children and some 20 % women. To cater for their medical needs, there must be sufficient paediatricians and gynaecologists. Most asylum applicants lack financial*

⁷⁰ Ministry of Labour and Social Affairs, “Provision of clarifications with regards the issuance of ANMKA from EFKA and KEP”, 1 October 2018, <https://www.in.gr/wp-content/uploads/2019/10/10%CE%94%CE%B9%CE%B5%CF%85%CE%BA%CF%81%CE%B9%CE%BD%CE%AF%CF%83%CE%B5%CE%B9%CF%82%CE%B3%CE%B9%CE%B1%CE%91%CE%9C%CE%9A%CE%91.pdf> (in Greek).

⁷¹ UNHCR, Submission by the Office of the United Nations High Commissioner for Refugees in the case of International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece (Complaint No. 173/2018) before the European Committee of Social Rights. 2.4.3.

⁷² RSA-PRO ASYL, STRUCTURAL FAILURE: Why Greece’s reception system failed to provide durable solutions, June 2019, pp. 6-10

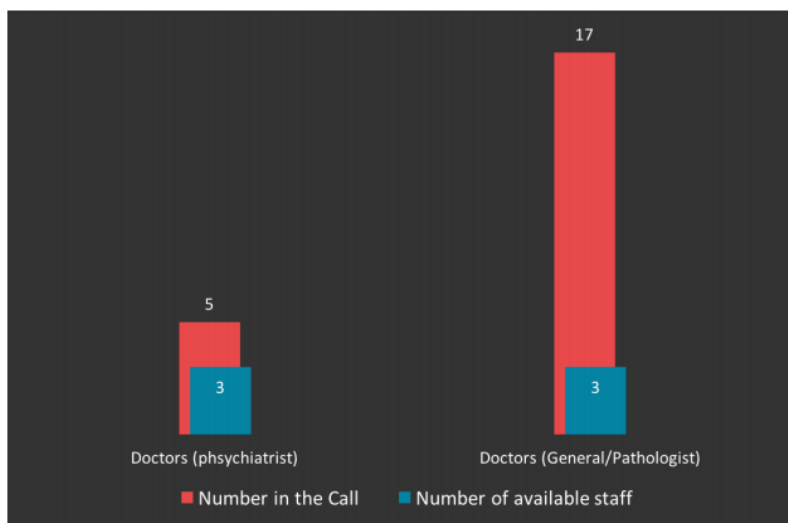
resources, which means that such medical services need to be provided by public healthcare providers. As Tables 6 and 7 show, there are only 10 paediatricians and some 15 gynecologists working in the public healthcare institutions on all five islands taken together. In Samos, there is only one paediatrician and in Kos none. Next to healthcare services, the expertise of paediatricians is also needed for the age assessment procedure. In June 2018, the Commissioner for Human Rights of the Council of Europe also noted the serious lack of medical staff working in the hotspots.”

96. Having acknowledged this gap, the Greek authorities have attempted to address it by deploying more medical staff to the islands. Through the AMIF-funded project Philos, the Hellenic Centre for Disease Control and Prevention (KEELPNO) tried to recruit doctors, nurses, psychologists and other professionals to support public healthcare institutions on the islands. In addition, medical staff, social workers and other experts were recruited to work within the hotspots. However, the results of such calls are disappointing. In February 2019, KEELPNO published the results of a call for tender for medical staff to work in the hotspots: the call included 17 positions for general practitioners and only three successful applicants figure in the provisional results. Furthermore, for the seven paediatricians required for the local public hospitals, there are only two successful applicants in Lesvos. Similarly, the call included four gynaecologists and there were only two successful applications.⁷³

97. On p. 21 the Government further lists the numbers of Philos staff in the Greek islands. However, it is not clear to which period these numbers refer and if they refer to the number in the call or number actually recruited.

98. The actual staff in RIC facilities on the islands (May 2019) is reported as follows (See table in RSA-Pro Asyl, Structural failure, p. 7 and 9):

Results of KEELPNO recruitment procedure for PHILOS 2 in the islands



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⁷³ FRA, Update of the 2016 Opinion of the European Union Agency for Fundamental Rights on fundamental rights in the ‘hotspots’ set up in Greece and Italy, February 2019, https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-opinion-hotspots-update-03-2019_en.pdf, pp. 31-32, “Case study: Paediatricians and gynaecologists working in public healthcare facilities on the five islands”

May 2019 the picture at island's RICs was:

	Chios RIC	Kos RIC	Leros RIC	Lesvos RIC	Samos RIC
Cultural Mediators	4	1		2	2
Doctors	0	1 Urologist	1	2	2
Midwives					1
Military doctor	1 for Primary Health Care				1
Nurses	4	4	6	8	5
Psychologists	4	6	2	2	1
Social Worker	4	5	2	1	2

(SOURCE: Data provided by INGO)

Conclusions

99. The information posited by the ICJ and ECRE is derived from a substantial and weighty information provided by numerous authoritative sources, which serve to confirm the allegations of the complainant organizations. Nonetheless, the Government has failed to provide much pertinent information and data to refute these allegations. The information provided by the Greek government on the merits of the complaint is highly generic and non-specific in nature. The information is in places confusing, lacking comparative data, testimonies and/or expert opinions in support of its contentions. The information provided does nothing to refute the submissions made by the ICJ and ECRE.

100. The minimal amount of information provided by the Government with regard to specific situations, figures and facts is also unable to contest the claims made in the collective complaint, especially in view of the present submission by the complainant organisations, which includes up-to-date and comprehensive information directly contradicting each point raised by the government.

101. The collective complaint, and additional sources cited in this response to the Government Observations, have demonstrated the serious systemic flaws in Greek law, policy and practice which deprive unaccompanied migrant children in Greece (both on the mainland and islands) and accompanied migrant children on the Greek islands of rights to housing, health, social and medical assistance, education and social, legal and economic protection, contrary to the obligations of Greece under the European Social Charter.

102. For these reasons, the ICJ and ECRE ask the European Committee of Social Rights to find violations of the following Articles of the revised European Social Charter in respect of the migrant children concerned:

- A violation of Article 31(1) and 31(2) of the revised European Social Charter (the right to housing);

- A violation of Article 17(1) of the revised European Social Charter (the right of children and young persons to social, legal and economic protection);
- A violation of Article 16 of the revised European Social Charter (the right of the family to social, legal and economic protection);
- A violation of Article 7(10) of the revised European Social Charter (the right of children and young persons to protection);
- A violation of Article 11(1) and 11(3) of the revised European Social Charter (the right to protection of health);
- A violation of Article 13 of the revised European Social Charter (the right to social and medical assistance);
- A violation of Article 17(2) of the revised European Social Charter (the right to education).