



THE GREEK
OMBUDSMAN
INDEPENDENT AUTHORITY



MIGRATION FLOWS AND REFUGEE PROTECTION

ADMINISTRATIVE CHALLENGES AND HUMAN RIGHTS ISSUES

April 2017

SPECIAL REPORT

Migration flows and refugee protection Administrative challenges and human rights issues

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Introduction



Introduction

The European Union is standing at the most critical crossroads on its path towards Integration. Voices of criticism, also strong in the past, are transforming into a direct questioning of the European project, and lately even to secessionist rhetoric. Called upon to manage the most serious economic crisis since its establishment, the EU is displaying inherent weaknesses in its effort to implement a cohesive, European plan to exit this crisis, giving way to the interests and power correlations of its Member States. At the same time, the political inadequacy and the shortsightedness shown by leaders of Member States in the management of the greatest economic and fiscal crisis, coupled with their apparent unwillingness to allow the Union to take over the "ownership" of a European exit plan, ultimately form a vicious cycle, since the effectiveness of the common EU institutions is directly called into question. Without doubt, the EU was called upon also in the past to strike a balance between the conflicting interests of its Member States, to reconcile often diametrically opposite priorities within a common, European narrative of development and progress for all its citizens, absorbing criticism for an irrational, unbalanced, or even unfair management of the prosperity created in its midst. The challenges however in managing affluence are quite different from those posed in managing poverty.

And in the second, cardinal crisis which Europe is called upon to address, this time a humanitarian one, its reflection is alarmingly similar. The signs were evident long ago, and the time was adequate for formulating an integrated and cohesive plan for addressing it. After the humanitarian nightmare caused by the wars in Afghanistan and Iraq, the so-called "Arab Spring" that dawned at the periphery of the European Union -aiming to bring democracy into these societies- inevitably led to the deconstruction of the old power structures, to a degree, in fact, that it uprooted any institutional foundation and led to fierce civil strife and tribal conflicts. The tragic

images of total devastation and the massive death toll, with the victims primarily identified as civilians, vulnerable people and small children, moved and continue to move the European and international public opinion. The mass flight of people from the hotbeds of the conflicts, in any way possible, using any means available, was the only visible hope for salvation.

Faced with this situation, the leaders of the EU Member States -who, more or less, retain the privilege of formulating its external policy- displayed an unjustified bewilderment. They were late in grasping the magnitude of the issue, and when they actually did, they reacted in a piecemeal manner, instead of acting in the context of a coherent plan. Yet again, they hesitated to assign to the Union institutions the "ownership" of an integrated narrative for the management of the mixed flows of migrants and refugees, allowing in this way -in addition to the humanitarian crisis in the southern borders of the EU, mainly in Greece and Italy- also for an outbreak of racist and xenophobic tendencies within the fold of Europe. The issue amplified political squabbles between Member States and informed political and party-political confrontations within Member States. Once again within a decade, Europe, acting rather as a transnational construction than an integrated political entity premised on the principle of solidarity, appeared unable to stand up against major challenges.

One of the most characteristic expressions of the common, European political structure giving way before the individual priorities and imperatives of the Member States is the so-called EU-Turkey Statement of 18 March 2016, which, without being a convention of the Union with a third country, from a legal aspect, introduced a host of derogations from the EU regulatory framework. Nevertheless, according to the authentic interpretation of the legal substance of this statement by the General Court of the EU, and regardless whether it is a political text with binding legal consequences, its content, and most importantly its commitments, cannot be attributed to the European Council or any other Union body, but

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solely to the leaders of the Member States. The reference to the EU, according to the arguments raised by the European Council which were accepted by the General Court of the EU, was made for reasons of "simplification" of the terminology used by the broad public, and should in any case be interpreted with the "journalistic" sense of the term, as referring in fact to the leaders of the Member States of the Union and not the EU itself...

In the midst of this contradictory web of political correlations, the emerging priority of the EU leaders, as expressed through their initiatives and statements and reflected in the EU-Turkey Statement, is the formulation of a framework for the management of mixed flows -that is, both economic migrants and asylum seekers, without exception- which creates an inhospitable environment for those already staying and a deterrent one for the intended new arrivals. In fact, by geographically restricting those entering Greece in the islands of the Eastern Aegean, after the entry into force of the Statement, and the subsequent overcrowding, the living conditions and the terms of administrative treatment would inevitably fall behind the minimum acceptable ones for a Union that was established and developed as a protector and defender of the *"values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities"*.

For the well-intended observer, the EU appears to be, to put it mildly, inconsistent: Its external policy is *"guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law"*. Its political and economic alliances and partnerships are developed and formed with countries and organisations that share these principles. In fact, it advocates in favour of taking active measures for the promotion of these princi-

ples, by imposing even broad spectrum economic embargoes and restrictions on trade with countries that do not share and respect the above principles, with adverse consequences on the daily life both of the third-country nationals and the European citizens. At the same time, it appears willing to yield in the faithful and firm implementation and focus on these principles, when its own humanitarian aid and inclusion policies are implemented within its borders.

However, for a wise and informed commenter, this apparent contradiction between the declared and fundamental principles of the Union and its actual lines of action, is explained by the previous analysis: The EU, through its executive branch, the Commission, as well as its separate agencies, is called upon to contribute to and support the implementation of a plan, providing coordination, contributing know-how, releasing human resources and funds -both emergency and extraordinary as well as through its regular financing instruments- the ownership of which it still cannot assume. At the same time, it accepts and absorbs the criticism for the deficits at the level of protecting and respecting the human rights of the populations on the move, and is called upon to implement the terms of a transnational agreement that lies, to a great extent, outside the regulatory framework of the EU itself, in terms of both its legal and humanitarian culture.

Greece was found in the center of both the crises that are testing Europe's cohesion, as an economic and cultural entity. After eight consecutive years of recession, the shrinking of incomes as well as citizens' rights, the crisis, from economic-fiscal, has evolved into a broader social one, with features of a now humanitarian crisis. Inside this undoubtedly compromising context, government, administrative and social structures were called upon to manage the population flows from third countries, in a way that befits a state governed by the rule of law, that respects and cares for human rights and fundamental freedoms, and to provide services for the provision of nourishment, housing, health care, education, so-

cial integration and access to asylum award procedures, which suit a modern, European State.

As with Europe as a whole, Greece went through different phases in addressing the issue of the mixed flows of third-country populations. The initial unwillingness to recognise the issue and to take even the most elementary measures to prepare for a more effective management, gave its place to a diffuse confusion when the time came to react; a complete, although unjustified, surprise, when the flows became more intense and dense during 2015. The lack of planning, of a coherent policy and a strategic plan, also ran through this phase, to such a degree that the weight of the management of the flows was put onto maintaining the so-called "Balkan Route" open, for the, more or less, safe crossing of the populations on the move. And lastly, the major event in the third distinct phase in the manifestation of the issue and in the management of the populations on the move is the EU-Turkey Statement of 18 March 2016. The flows are now controlled and the population of migrants and asylum seekers living in the country is measurable and limited. However, still today, more than a year after the Statement, there is still no integrated management plan, with a clear, stated and coherent narrative, with milestones and deliverables, targets and time frames of implementation that are complied with. Instead, the Greek administration is still operating in a state of emergency, which results in ad hoc arrangements and allows procedures, especially as regards the selection of contractors for services and goods, in derogation from the applicable institutional framework.

The Greek Ombudsman, in line with his institutional role, has undertaken initiatives and has made repeated, targeted interventions, remarks and appeals to the competent authorities throughout the duration of the first phase of manifestation of the phenomenon, at a time prior to the surge of the flows observed in 2015. With recommendations and counsels regarding institutional regulations and preparatory actions, it intervened, in order for the country to be better prepared and capable

from an administrative aspect to face the increase of the flows of the populations on the move, already apparent at the time. Very few, however, of the Independent Authority's recommendations, were effectively processed and assessed. The Authority served this institutional role also during the next phases, and it will continue to do so in the future, conscientiously, impartially and independently, providing to its individual recommendations and interventions a sound foundation of well-documented opinions and conclusions.

With this report, the Authority is presenting its conclusions regarding the management of the population flows, with special emphasis on the period from the explosion in the number of the third-country populations on the move, up to approximately one year after the entry into force of the EU-Turkey Statement, aiming to highlight the degree and the level of the response of the administration's structures to the demands of the phenomenon, both in its most extreme expression, and in the present one, which is more predictable and certainly manageable. Special teams of the Authority's staff, serving the mission of the Greek Ombudsman for the protection of human rights and fundamental freedoms, with special emphasis on the rights of children and vulnerable groups, made a number of on-site inspections, cooperated with national and EU authorities and representatives of the civil society, collected, compared and evaluated official data, public statements and interventions of national and EU bodies, and analysed institutional initiatives and regulatory acts. The special competences of the Authority were also put into use; rights were exercised as the National Preventive Mechanism for monitoring the implementation of and compliance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the General Assembly of the UN, as the equality body in the country that combats any form and expression of discrimination and as the external mechanism for monitoring the forced returns of third-country nationals. Thus, the Authority reached its documented general conclusions on the role of primarily the national and

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secondarily the EU agencies, structures and services for the management of migration flows and refugee populations in the country.

The Ombudsman's report follows two main parameters in its separate chapters: on the one side, the evaluation of the administrative procedures and the institutional framework for the management of populations on the move. In this context, the overall process for access to legal protection for the refugee status is examined, from pre-registration, registration and identification of persons that belong to vulnerable groups, up to the completion of the administrative asylum process, at both instances. Also, the implementation of the arrangements regarding administrative detention is being investigated, as well as the return and readmission procedure, for those third-country nationals whose asylum applications have not been upheld. On the other side, it focuses on the provision of services, based on assuring human, acceptable living conditions, "normalising" the daily life of the refugee/migrant populations and laying down the ground for their smooth inclusion and integration into society. Provision of nourishment, housing, health services and education, as well as security problems are the main themes of the second parameter. The report also reflects on the most recent developments, up to the end of the first quarter of the present year, and concludes with a broad-spectrum presentation of the principal assumptions of the Authority.

The shortcomings, deficiencies and the impression of an administration striving to meet demands that appear to constantly overwhelm it, in each one of the areas which this report examines, have a common background; the fact that key national and European stakeholders fell short of realising in good time and interpreting in accurate political terms the situation unfolding in the field during the past two years, as well as before that. The phases mentioned above, of the initial denial in recognising the emerging situation, followed by confusion and surprise, when the phenomenon had taken explosive dimensions, and the current management characterised

by putting emphasis on creating a climate aiming to deter intended migrants and refugees and an asphyxiating living environment for those already here, in order to encourage them to decide to return to their home country or at least to their country of origin, are different aspects of the absence of political forecasting that ran through the reaction of the European and Greek administration. It largely overlooks that fact, of course, that the populations stranded on the islands of the East Aegean, arrived there -in their overwhelming majority- after arduous, often exceptionally dangerous migratory and underground routes, attempting to escape from even more strenuous conditions; war and civil conflict, or absolute poverty. The view that by maintaining rather uncomfortable -with substandard services and lacking any realistic prospects- living conditions in Greece these populations would voluntarily opt to return -return to where?- , while others would be discouraged from entering, is rather myopic, and does not seem to take into account, even today, self-evident factors: the root causes of the movement of the populations and the primitive instinct of self-preservation.

The diffusion and overlap of competences, on the one hand between the services of the -newly formed and lacking a conventional administrative infrastructure- Ministry of Migration Policy, while on the other between the primarily competent ministry and the other competent ministries and involved public bodies and services, international organisations and NGOs, are impediments to the coherent, all-inclusive and effective management of the problems, and renders accountability and the fair attribution of liability quite blurry. An improved coordination of services and agencies operating in the accommodation facilities and the effective supervision of their operation by the General Secretariat for Reception, must be a top priority for Administration.

Despite a regulatory inflation, institutional arrangements are still absent in areas most needed, such as the *modus operandi*, the (re)distribution of competences and adequate coordination in open accommodation facilities

or anyplace where more than one agencies operate at the same site. And even special legislative initiatives, as those concerning the examination of asylum applications, underwent repeated amendments, resulting in confusion and uncertainty regarding the applicable procedure. As regards the amendments made, the repeal of the provision for submission of the Appeals Authority's reports to the Greek Ombudsman, so that the Authority may monitor procedures followed, is undoubtedly noteworthy.

Besides, respect for rights does not often secure due attention: when the Greek state intervenes with special legislative initiatives, as well as when implementing the regulatory framework, there frequently appears to be a certain insouciance for human rights. The case of the systematic implementation of administrative detention, and the recently declared intention to regulate for further expanding it, in contrast to its limited declarative purpose only as a necessary measure for the removal of the third-country nationals, supports the above assumption.

Issues of transparency are raised, most notably regarding the selected method for the conduct of public procurement tenders, with corresponding provisions for direct awards, still justified on the grounds of an unceasing state of emergency, as well as the process for the spatial planning licencing and certification of properties to be used as accommodation sites.

The complications in the management of the population flows in Greece were not, and are not, as seen in the report, of a primarily economic nature. The European Commission proved its effectiveness in the configuration and disposal of both emergency humanitarian funds as well as regular financing instruments, with adequate resources. There were, however, and potentially still are, delays by the Greek administration in the absorption and use of the available funds, as well as shortages and gaps in the mechanisms and procedures for auditing and accountability. The method in which European and national

funds were managed is on its own a distinct and hotly debated issue, which may potentially inform a separate investigation.

Whatever problems there may be, they were never widely diffused in society. The Greek society as a whole, and more particularly the local communities that had to carry a disproportionate burden, despite the acute financial crisis with distinct and clear elements by now of a humanitarian crisis, was quick to react. The absence however of a uniform, coherent narrative, with expressed commitments, a strict time frame and deliverables and measurable results, led to the generalised disappointment, suspicion and sometimes open rift.

The issue for Greece, as well as for Europe, was and still is primarily political. The articulation of such a cohesive political context, the timely preparation of a strategic plan and the selection of effective and flexible implementing tools would multiply the operational capabilities of the administration.

Housing and nourishment, for example, are neither a purely technical nor a strictly managerial issue. Today the issue is the existence itself of fenced accommodation facilities, the risk of ghettoisation or institutionalisation, the segregation, the familiarisation of society with specific designated spaces. Ensuring conditions towards "normalising" the daily life of third-country nationals, access of minors to education and entertainment services, the provision to adults of employment opportunities, and the encouragement for everyone's participation in social, cultural and economic activities, are all political issues.

By the same token, persisting in reflecting on the phenomenon, even in the manageable form it has taken, in emergency terms is also a deeply political choice. It is a well-known fact, however, that during a state of emergency, where procedures in derogation of the provisions of the standard applicable regulatory framework are condoned, neither is the rule of law rigorously respected

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nor human rights may be adequately protected.

Both Greece, in particular, and Europe, in general, set the benchmarks on the standards for managing third-country population flows. The politics and practices adopted and implemented may form and influence, to a significant degree, the measure and degree of legal protection and humanitarian response and treatment of the populations fleeing from areas of natural disasters, humanitarian risks and war across the world. The challenge for Greece, as well as the other EU Member States and EU institutions is still that these policies and practices are planned and implemented without any compromise to the respect for human dignity, the rule of law and the mandates of international, EU and national legal culture.

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A. Administrative procedures and problems



A. Administrative procedures and problems

The administrative procedures followed along the migrants' route, from border crossing until returning to the country of origin, if they are not placed under international protection in Greece, present problems that affect both their legal status and rights, as well as the overall elementary provision of temporary accommodation or their subsequent integration. For this reason, among the problems encountered in the management of the mixed refugee and migrant flows during the 2015-2016 period, priority is given to the following issues: registration at entry and the keeping of statistical data records, the identification of vulnerable persons requiring special care and the overall handling particularly of any unaccompanied minors among them, the access to political asylum for those who seek international protection from non-refoulement and the procedure for the return of third-country nationals to their countries of origin and deportation based on the readmission procedure.

1. Irregularities in the registration of irregularly entering third-country nationals and issues of reliability and evaluation of statistical data

The intensity of the refugee and migrant flows in 2015 led to the Western Balkans route becoming and being accepted as an "official" route. Persons illegally entering the Greek territory on a massive scale, subsequently also left it illegally, and this illegal entry and exit took place along a series of countries, until they illegally entered the country of destination. This means that until the closing of the borders and for a period of several months, many EU and other countries tolerated, due to the emergency circumstances, the violation of a range of legislative provisions regarding entry and stay of third-country nationals on their territory. According to a FRONTEX estimate, from data it collected from the countries, and not through its own research, there were 763,038 violations detected on the Western Balkans route in 2015. This number represents the maximum, whereas it does not exclude that the same person committed the violation twice. In 2016, there were 122,779 violations.¹

According to another FRONTEX record, there were approximately 2,044,000 illegal border crossings recorded in 2015 - excluding intra-regional irregular migrants - on the Turkey-Greece and Bulgaria route, at the borders between these three countries and their region.² We are of course aware that these are persons illegally crossing different borders and are therefore often recorded more than once.

This example on the one hand introduces the issue that a lot of figures and estimates require further analysis in order to correctly interpret them, and on the other hand highlights a restricted reflection of reality in such types of statistical estimates. For example, the numerical estimate of the 2015 inflows into Greece and the outflows to the north borders is perceived linearly and does not reflect the certified exit of irregular migrants already living in the country.

But why are we interested in such an accurate reflection of the flows and the profile of the persons who moved, and to a certain degree continue to move or reside, temporarily or less temporarily, in Greece and the neighbouring countries?

The interest lies not only in keeping a historical record of one of the most important population flows towards Europe and between its countries since 1990; although not being the largest or the most important one, it did take place in a very short period of time. When it comes to our country in particular, it is of special interest for many reasons: To record the degree to which the country managed to respond to the task of registering illegal arrivals, as its domestic laws primarily require, illegal departures, as well as the number of persons staying and the place and time of their stay in the country. To also record the degree to which the registration of the arrivals complied with the terms and procedures set out by the applicable provisions and the country's international obligations. Moreover, to be aware of the degree to which the various records correspond to reality - for example how many of the arrivals (and departures) were citizens of Syria, Iraq, Afghanistan or countries whose citizens - according to asylum awards - do not have, primarily, a refugee profile.

In addition to the above, after the dramatic reduction in the flows in the spring of 2016, and the shorter or longer duration of the stay in the country of the persons who entered it illegally, a statistical depiction that is as accurate as pos-

¹ <http://frontex.europa.eu/trends-and-routes/western-balkan-route/>

² http://frontex.europa.eu/assets/Publications/Risk_Analysis/WB_ARA_2016.pdf, p. 12.

A. Administrative procedures and problems

sible serves a range of broad-spectrum practical reasons, such as security and public order, as well as the improvement of the services provided to these persons. For example, recording the population per age group in all types of temporary accommodation facilities, simultaneously serves multiple needs of the Administration: from the security of the general population and the persons themselves staying at an accommodation facility, to the programming of the educational, health or other needs of this population.

Going into the third year since we first observed the acute increase of the flows, we believe that four key questions emerge, which, at first sight, are linked both to the past and the present, but they primarily concern the future:

1. How many arrivals to the islands were registered? What was the procedure that was followed? What is the degree of reliability of the procedure? Were there any potential expedencies which the Greek authorities served, e.g. non registration, incorrect registration or acceptance of the simple statements of the name and citizenship of the arriving persons?
2. Why were the Greek authorities not registering those exiting the country through the Western Balkans route?
3. Is it still of any significance today or are there any consequences from the problems in the registrations in the past, and the method followed?
4. What is the situation with those staying in the country today? How reliable are the statistics on them? And if the reliability is reduced, what is the reason?

These questions do not have a simple answer, and moreover, such answer does not fall primarily under the scope of the Greek Ombudsman's competences, and especially when it contains estimates, some of which are related to potential political decisions. Without doubt however, the questions are closely connected to the independent authority's role in controlling Administration and its compliance with legality, highlighting and preventing cases of maladministration and ensuring an institutional and administrative framework of a modern European state governed by the rule of law, which does not allow violations of human rights. In this context, we will not try to answer the questions in the following paragraphs but we will highlight certain points related to them.

1. Did the competent Greek authorities correctly register the arrivals? Even though we are aware that a rather small number of individuals left the islands without being registered,³ the most important shortcoming from a quantitative aspect occurred with the incorrect registration, i.e. not in accordance with the stipulated procedures. The incorrect registration of a large part of those entering the country started to gradually decrease only at the end of 2015. According to a source, which the competent Ministry has not yet refuted, from the 1st of January 2015 until the 14th of November 2015, Greece had registered 136,798 new entries in the Eurodac system from the 575,242 arrivals which FRONTEX had (also) counted during the same period.⁴ This means that approximately one out of four arrivals were recorded following the correct and stipulated procedure and were directly traceable by the authorities of other countries. A simple registration was followed for many more, something however which potentially meant an incorrect identification of their name and citizenship.⁵ These shortcomings took on a particular political significance for the country and were discussed before the European Commission.⁶ In fact, in accordance with the relevant bi-annual Schengen Evaluation Report, Greece submitted a request for support in the registration by the Rapid Border Intervention Teams (RABITs) of FRONTEX as late as the 3rd of December 2015,⁷ when the flows had already significantly diminished. Registration started improving from that time, and from the onset of 2016 all "visible" arrivals are gradually registered.⁸
2. From the second quarter of 2016, the arrivals of illegally incoming third-country nationals, and as a result, their arrests, are at a "record low", whereas overall for 2016, if the first quarter is exempted, arrivals are proportionally below pre-crisis levels.⁹ The examination of

³ We are not however able to make any estimate.

⁴ <http://www.kathimerini.gr/849740/article/epikairothta/ellada/h-aporrhth-ek8esh-twn-empeirognwn-monwn-ths-komision-gia-to-prosfygiko>

⁵ In reality it increased the chances for incorrect registration and in particular of the association and future identification of these individuals.

⁶ European Commission, Schengen Evaluation Report on Greece 27.01.2016 (http://europa.eu/rapid/press-release_IP-16-174_en.htm).

⁷ https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/borders-and-visas/schengen/docs/eighth_biannual_report_on_the_functioning_of_the_schengen_area_en.pdf

⁸ 78% in January 2016, see European Commission, Managing the refugee Crisis, progress report.

⁹ Arrests for illegal entry and stay according to the Hellenic Police, until the start of

arrests only at the Greek-Turkish sea and land borders each year also shows that 2016, with the exception of the first quarter, did not deviate from other years, with the exception of 2013.¹⁰ Since the Hellenic Police does not issue arrest statistics per month, but only until April 2016, during this month, arrests in the North and South Aegean regions were 3267 and 309, respectively.¹¹ In total, from the 201,176 arrests up to November 2016, the 159,292 were made during the first quarter.¹² The UN Refugee Agency (UNHCR) recorded 22,998 new entries (“arrivals”) in Greece for the period from April to December 2016.¹³ Respectively, the data from the FRONTEX statistics demonstrate that already in the second quarter of 2016, when the flows were decreasing, there were 8,818 illegal crossings on the Eastern Mediterranean route in total (land and sea borders), 7,086 of which were at the sea borders.¹⁴ In the third quarter there is a further reduction, as we indirectly deduce,¹⁵ since the figures have not been published yet. In 2012, to give a comparison of the flows at the borders, the Hellenic Police and the Port Authorities had arrested on the Greek-Turkish land borders 30,498 individuals and 3,596 in the islands in the proximity of Turkey, a total of approximately 34 thousand persons.¹⁶ All the above mean that flows into Greece, and subsequently arrests during the last nine months of 2016, are among the lowest for the country over the past ten years. In fact, since arrests on the mainland are low, these nine months may be viewed as reflecting exceptional low numbers of irregular residents in Greece. The flows alone clearly do not justify any special or exceptional commit-

ment of human resources and funds.

3. As regards the significant shortcomings in the registration procedure, which lasted approximately nine months after the increase of the flows in the spring of 2015, several explanations have been put forward, which usually focus on the sudden and huge volume of the incoming population, the EU's tardiness in responding to the migration/refugee stream by contributing funds, know-how and human resources, as well as the inertia and shortcomings of the machinery of state and/or government. From all information and data we have available, it is rather risky to assign greater importance to only one of these reasons; however, the concurrence of all these factors must be considered a fact. The results of the incorrect registrations of the past today are limited mostly to the verbal accusations brought against the country by the authorities of other European states, in particular of the EU, regarding the incorrect recording, or non-registration of persons residing in their territory who initially entered EU territory from Greece.
4. There was one at least significant decision of non-registration by the Greek authorities, and pertained to third-country nationals illegally leaving the country from the informal, albeit accepted, Eidomeni corridor. The Greek state decided not to record any of these departures. For a number of months, the Greek state ignored the population that was residing, even temporarily, on its territory, both from the aspect of numbers, and the aspect of their identity. It is telling that any knowledge we have on the numbers of individuals leaving from Eidomeni come from data given by FYROM's UNHCR to Greece's UNHCR, which pertained only to the numbers of people recorded every day, without their names and details, at least as they appeared on the registration documents of the Greek authorities which were in the possession of the departing persons.
5. The problem, as mentioned above, has not been significant for a number of months from the aspect of inflows. Despite the fact that the data show a growing flow towards the islands of persons who due to their country of origin do not at first sight have a refugee profile, as a total the population illegally residing in Greece, or under an asylum seeker status, waiting for relocation to an EU country or family reunification, is clearly smaller than what it was a few years ago. The approximate 60 to 65

the crisis: 2006=95,239, 2007=112,364, 2008=146,337, 2009=126,145, 2010=132,524. The elimination of the Schengen visa requirement for Albanian citizens (free entry and stay for three to six months a year) and the financial crisis caused a drop over the next years: 2011=99,368, 2012=76,878, 2013=43,002. There is a new increase in 2014, reaching 77,163 arrests (see statistics in: http://www.astynomia.gr/images/stories/2014/statistics14/allod2014/statistics_all_2014_all&dia_apo2006.JPG).

10 Arrests on the Greek-Turkish borders: 2007=33,570, 2008=44,610, 2009=36,472, 2010=53,292, 2011=30,433, 2012=54,974, 2013=12,556, 2014=45,421. (see Hellenic Police website with statistics for the corresponding years).

11 See Hellenic Police website. The nation-wide total during April was 5,874 arrests.

12 Ibid.

13 <https://data2.unhcr.org/en/documents/download/55341>.

14 http://frontex.europa.eu/assets/Attachments_News/Fran_2016_Q2.pdf

15 http://frontex.europa.eu/assets/Publications/Risk_Analysis/WB_Q3_2016.pdf http://frontex.europa.eu/assets/Publications/Risk_Analysis/Fran_2016_Q2.pdf, p. 6.

16 See Hellenic Police website.

A. Administrative procedures and problems

thousand which is the considered maximum limit of third-country nationals residing in the country who preferred to enter illegally but “visibly” since the spring of 2015, does not appear to deviate upwards compared to the total illegal arrivals and stays in the country, especially after the drop since 2011 of the standard flows from Albania, but on the contrary is rather lower. This assessment is supported both by the stability in the arrests in 2016 on the Greek-Turkish border overall, and the decrease in the arrests in 2015-2016 on the mainland.¹⁷

According to estimates, illegally residents in the country are calculated at a maximum of 350 to 390 thousand, before and at the start of the financial crisis.¹⁸ Despite the fact that the estimates of the Greek Ombudsman’s members tend towards lower numbers, in any case, all estimates agree that up to 2011, a little under half of all irregular migrants were Albanian citizens. Both the crisis and the visa exemption for Schengen countries for Albanian citizens, the constant changes to the legislative framework from 2011 onwards, and the ascertained departure through Eidomeni of persons who had been “trapped”, led to a significant decrease of irregular migrants. From the available data of the Hellenic Police, since there has been no similar study since 2009,¹⁹ for example from the “stability” in the deportations of Albanian citizens we can presume with relative certainty that beyond the new arrivals since 2015, for which there are several reliable figures, the other irregular migrants have decreased significantly. *From this aspect, the total administrative workload related to illegally residents or persons in the “grey zone of legality”, from the second quarter of 2016 to this day is exceptionally low, perhaps one of the lowest since 1990.* This is not only an issue of the police authorities, but the entire Greek Administration and the related government structures, such as for example providers of health services, education, etc.

The issue of the citizenship of arriving individuals

An issue of particular importance having a political perspective, pertains to the percentage of Syrian citizens who were involved in this route. Beyond the possible thoughts that may arise regarding

the triggering factors of the flows and the related explanations, it is interesting to see to what degree the actual regis-

tration reflected reality. The FRONTEX estimate is that in 2015 the registered third-country nationals who illegally crossed the borders into the Western Balkans were 35% Syrian citizens and 15% Afghanistan citizens. They were followed by Iraqis, Pakistanis and Iranians. All these together did not exceed 60% of the total flows into the Western Balkans.²⁰ Based on the FRONTEX data, especially during the second half of 2015, around 38% are recorded as of unknown (“not specified”) citizenship. An issue therefore arises, inter alia, to what percentage individuals were registered by the Greek authorities as Syrian citizens when they actually were not. It is difficult to specify the exact number. Indicatively however, we mention that in 2015, among 173,074 Syrian citizens who went through screening and identification processes, 85.8% were verified to be Syrian citizens.²¹ To these, as a percentage of persons declaring false information, we must add a smaller percentage of those declaring to be Iraqis or other nationalities. There are no available data on how many of them were registered with wrong information in Greece, despite nearly all of them following the Eastern Mediterranean route and then the Western Balkan route.

The FRONTEX data offer a new picture regarding the country of citizenship of those who crossed the borders, since the Syrian citizens who followed the Eastern Mediterranean route do not exceed 50% of the flows.²² The Syrians, as a nationality illegally crossing the borders on the Eastern Mediterranean route are now recorded at second place after the Afghanis, already from the second quarter of 2016 and onwards.²³ The same picture is formed regarding the arrivals from Turkey towards Greece, as provided by the UNHCR based on the Hellenic Police and Hellenic Coast Guard data.²⁴

In any case however, the great majority of new arrivals continue to this day to come from Syria, Afghanistan and Iraq - countries with high asylum recognition rates.

¹⁷ See relevant data on the aforementioned website of the Hellenic Police.

¹⁸ <http://irregular-migration.net/index.php?id=176>

¹⁹ Only one update in 2012 (see footnote above)

²⁰ These figures do not include data from the crossing of the borders from Turkey into Greece, but essentially the route from Greece and onwards.

²¹ <http://www.statewatch.org/news/2016/jun/eu-frontex-west-balkans-risk-analysis.pdf>, p. 20

²² http://frontex.europa.eu/assets/Publications/Risk_Analysis/Fran_2016_Q2.pdf, statistical tables

²³ http://frontex.europa.eu/assets/Publications/Risk_Analysis/WB_Q2_2016.pdf, http://frontex.europa.eu/assets/Publications/Risk_Analysis/WB_Q3_2016.pdf

²⁴ For the whole of 2016 see https://www.ecoi.net/file_upload/1930_1485858949_greecefactsheetdecember-2016.pdf, p. 4

The current situation and the issues of registration and statistical records

Despite the country, paradoxically and in contrast to our perceptions, undergoing a period during which the number of illegal arrivals

and illegal residents is very low, both the EU-Turkey statement and its execution, the returns (deportations) and the significant increase of asylum claims create a qualitative difference. The greatest part however of the entire endeavour is related to the management of up to 15 thousand people living in the various open accommodation facilities, a significant part of which are in the midst of the relocation or family reunification procedure and persons located on the islands or the pre-removal centers under different statuses, who are not more than 11 thousand.²⁵

One would expect that both the know-how gained over the previous years, and the domestic and international environment regarding the refugee issue, would serve to “impose” on the country the proper representation of the situation, and from there on, its better management since the numbers are actually quite low.

Today the issue of registrations and statistical records pertains to: a) How many of the registered migrants are still in the country; b) How are they distributed per region and legal status (before - after the EU-Turkey statement, etc.); c) How many are being detained; d) How the asylum granting procedure is proceeding; e) How many are staying at the accommodation centers except for the islands and f) What methodology Greek authorities follow regarding the registrations, namely what they register, what they don't register and what method they use to register. Finally, which of these details they disclose.

The Greek Ombudsman considers that keeping the best possible, complete and high quality statistical records can only be to the benefit of both the machinery of state, and those staying in the country. Despite the fact that the improvement of the statistical data related to migration in recent years is satisfactory in certain cases, it concerns areas where the improvement had preceded the increase of the flows. To date, the statistics recorded continue to be defined by two factors: The first relates to the method used for collecting and “classifying” the data. It usually pertains to general calculations without any qualitative and quantita-

tive processing, something which in the end obscures the solution to the problems and obstructs the competent state authorities from defining their next steps. The second pertains to the withholding, the non-publication of data, which will allow control and evaluation of the results of the state's intervention, and in this case as well, the design and implementation of the policies by the competent state agencies.

We chose two examples, one from each factor, as they arise from a series of on-site inspections conducted by the Ombudsman.

A. An important issue pertained to the deviation of the numbers officially given by the Ministry of Migration Policy, for those staying at the mainland's open facilities. At the end of 2016, based on the Greek Ombudsman's on-site inspections from the second half of 2016 until the first quarter of 2017, we calculate that at least 25% of the individuals recorded to be living at the facilities, are living outside of them. We should note that not staying in the camps, only partially releases from their burden the persons in charge, since those staying outside still make partial use of certain services (e.g. asylum procedure, partially medical services, etc.). On the other hand, it is a clearly differentiated group of perhaps more than 12 thousand persons at the end of 2016. The Greek authorities insist on “registering” those staying usually based on the food “portions” and not the number spending the days or nights in the facilities, or at least not separating the two groups.

B. The statistical data on the number of children attending school, usually consist of general percentages. But even these, according to our inspections, do not reflect reality. A percentage of people which is difficult to calculate, despite their initial appearance, are not attending the special program.²⁶ Moreover, the age records of the minors in each accommodation center are not accessible, which would give a full picture regarding how many attend the standard or special education program and make the statistical data available to any involved agency of the Administration (from central to local services), but also make their accuracy verifiable.

²⁵ See the estimates of the UNHCR for the end of February 2017 (UNHCR's contribution to the Greek Ombudsman's Special Report, March 2017, p. 1).

²⁶ We do not refer to those that leave the country, but to those that stay in or outside of accommodation facilities or even recently in “apartments”.

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Asylum: the relativisation of the "burden" of the applications

Our country considers that it is mainly encumbered with a particularly increased number of asylum applications. A comparative examination however puts this

picture into perspective:

Hungary in 2014 had received 41,215 applications, whereas in 2015 the number shot up to 174,400.²⁷ In 2016 it received 29,432 applications (at the 1st degree), out of which approximately 11 thousand by Afghani and 4 thousand by Pakistani citizens.²⁸ Correspondingly, Greece in 2014 received 9,434 applications, in 2015 it received 13,195 applications and in 2016 it received 51,091, of which 26,692 were by Syrian, 4,371 by Afghani and 4,695 by Pakistani citizens.²⁹ As emerges from the above, Greece, compared to Hungary, a country with similar population, was affected much less from the flows in respect of the asylum applications. In total, despite the enormous burden put on Greece by the flows in 2015 and in early 2016, it was not one of the top European countries for asylum applications as a population percentage. Statistically, the country in 2015 was in the 17th place among the 30 EU and EEA countries, with 1047 asylum applications per million residents, with countries such as Malta having correspondingly 3948 and Bulgaria 2800.³⁰

In any case, we note the difference in the asylum application figures given on the Migration Policy Ministry website with those of Eurostat, since the former's numbers are higher (by around 2 thousand per year for the 2014-2015 period). Further analysis of the data, going beyond absolute numbers, shows us that Greece did not receive particular pressures by the sudden increase of the flows in 2015, since according to the previous data of Eurostat, it is in 16th place among the 30 countries as regards the percentage change in 2014-2015, with a 50% increase. Comparatively, during the same period Finland had an 822% increase, Poland 83%, Bulgaria 87% and Estonia 54%.³¹ This fact, as well as the anticipated closing of the borders from the end of

2015 and the expected increase of the applications, which could reasonably be foreseen, lead to a very significant, but predictable, change in 2016, which was rather smooth compared to other countries.

2. Implementation of vulnerable persons screening³²

2.1. Short review and description of the current situation

One of the biggest problems that require an immediate and effective solution is the handling and identification of persons belonging to vulnerable groups.

According to the applicable laws,³³ vulnerable groups are: *a) unaccompanied minors; b) persons with disability or suffering from incurable or serious disease; c) the elderly; d) women during pregnancy or puerperium; e) single-parent families with minor children; f) victims of torture, rape or other serious form of psychological, physical or sexual violence or exploitation, persons with post-traumatic stress disorder, especially survivors and relatives of shipwreck victims, and g) victims of human trafficking.*

Despite the fact that the existing laws include a provision on special care for these persons, it is proven that its implementation is particularly difficult, due to the significant shortcomings in the screening procedures, in combination with the inadequacy of suitable facilities for the provision of services to persons belonging to vulnerable groups.

Starting with the evaluation of the situation before the current legislation with the provisions of Law 4375/2016, it should be noted that despite the existence of a legislative framework, which had incorporated the EU rules (PD 220/2007) and despite the reform of the reception and asylum system with law 3907/2011, the identification procedures for persons requiring special care were particularly problematic.

The significant shortcomings and inadequacies of the reception and screening system in the country, in combina-

²⁷ <http://ec.europa.eu/eurostat/documents/2995521/7203832/3-04032016-AP-EN.pdf/>

²⁸ <http://www.asylumineurope.org/reports/country/hungary/statistics>

²⁹ http://asylo.gov.gr/wp-content/uploads/2017/05/Greek_Asylum_Service_Statistical_Data_GR.pdf

³⁰ <http://ec.europa.eu/eurostat/documents/2995521/7203832/3-04032016-AP-EN.pdf/>

³¹ Particularly enlightening for the fluctuations of the applications per month and country in 2015 is the table in http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asyappctzm.

³² Identification procedure as part of the First Reception procedure

³³ Article 14, par. 8 of Law 4375/2016, added persons with post-traumatic stress disorder, especially survivors and relatives of victims of shipwrecks, in the definitions of vulnerable groups in the provision of Article 11(2) of Law 3907/2011.

tion with the increase of the flows from 2015, are the main reasons that the competent authorities failed to manage the incoming population. More specifically, it is worth noting that in implementation of Law 3907/2011 only one First Reception Center had been put into operation, at Fylakio, Orestiada (land border in the North-East of the country). Considering the fact that the increase of the entry flows already since the end of 2014 is encountered mainly in the Aegean islands, it is not hard to realise the magnitude of the problem regarding the insufficiency of appropriate procedures for the identification of vulnerable persons by the understaffed First Reception Teams or Mobile Units, as well as the inability to provide special care for these persons.

A typical example is that of the First Reception Center in Moria, Lesvos, which opened in March 2015, with significant problems in its operation. On the other Aegean islands (Samos, Chios, Kos and Leros), which did not have a similar service in operation, from 2015 and until the establishment of the Reception and Identification Centers (RICs), in the first quarter of 2016, to which thousands of people arrived each day, the identification of vulnerable persons who required international protection was even more problematic.

For instance, in June 2015, during an on-site inspection at a Pre-removal Center in Northern Greece (Drama), the Greek Ombudsman saw that they were holding among the adults a group of young people who had entered from Chios, but without having registered them as minors (as regards the issue of age verification see Chapter A.3).

The Greek Ombudsman has ascertained significant omissions also in the procedure for the identification and protection of persons who are persecuted due to their sexual orientation or gender identity, despite the existence of an explicit obligation both by international and EU law. The case of a lesbian woman seeking asylum is indicative - the Ombudsman intervened towards the Asylum Service and the Hellenic Police, reminding them of the obligation to examine eligibility for refugee status in cases of LGBT applicants and at the same time stressing the need for the interview to be conducted in conditions that ensure secrecy and confidentiality.³⁴

In order for LGBT persons seeking international protection to be met with the appropriate treatment and care, the Ombudsman noted the need to include in the definition of

vulnerable persons with special reception needs also cases of victims of violence on grounds of gender, sexual orientation or gender identity in its observations to the draft law for the reception of applicants for international protection (Directive 2013/33/EU, recast 29.6.2013). In particular, it recommended to the Ministry of Migration Policy to take special care in the reception of applicants for international protection that have these characteristics with special reference to the law, since this need emerged from the investigation of relevant reports.³⁵

Similar is the situation with other categories of persons that belong to vulnerable groups, such as people with disabilities, with significant shortcomings in all stages of the procedure from the identification of these persons to the lack of suitable reception conditions.³⁶

According to the applicable legislative framework, there is an obligation to provide special care to vulnerable persons, at all stages of the procedure from their entry into the country, including the registration and review of the application for international protection. Also, it should be reported that even after the EU-Turkey statement, the provisions of Law 4375/2016 regarding the special procedures at the borders do not apply to those who belong to vulnerable groups, who are in principle exempted from readmission procedures. Specifically, in Article 60(4)(f) of Law 4375/2016, as amended and in force, it is stated that anyone falling under the provisions of Articles 8 to 11 of Regulation (EU) No 604/2013 of the European Parliament and of the Council (Dublin III Regulation) is exempted from the special procedures for the receipt and examination of international protection applications at the borders, including the persons belonging to vulnerable groups, according to Article 14(8) of Law 4375/2016.

According to the applicable laws (Article 14(8) of Law 4375/2016), there is provision that the Director of the Center or the Unit, following a recommendation of the head of the medical and psychosocial support team, refers the persons belonging to vulnerable groups to the competent in each case social support or protection agency. A copy of the medical check and psychosocial support file is sent to the

³⁴ See relevant report No. Φ 212092/2016.

³⁵ Annual Report 2016, pg. 121 at <https://www.synigoros.gr/resources/ee2016-14-diakriseis.pdf>

³⁶ Human Rights Watch, Greece: Refugees with Disabilities Overlooked, Underserved, January 2017 Identify People with Disabilities; Ensure Access to Services.

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head of the open Temporary Reception or Accommodation Facilities or to the appropriate social support or protection agency to which they are referred. In any case, the continuation of any medical treatment in the cases where such is required is ensured. The persons belonging to vulnerable groups may remain at the RICs, in special areas, until the completion of the procedures of Article 9 of Law 4375/2016, without prejudice to the deadlines of Article 14(2) of the same law. The Reception and Identification services take special care to refer families with children under 14 years old, in particular toddlers and infants and to meet their particular needs.

Also, according to Article 14(2) of Law 4375/2016 there is provision with regard to persons who belong to vulnerable groups, that the Director of the Reception and Identification Center at the country's borders, due to emergency needs because of the increase of the arrivals or for the appropriate completion of these procedures, and in particular with regard to persons belonging to vulnerable groups, may by a decision refer a third-country national or stateless person to a RIC on the mainland or stipulate the stay in other appropriate facilities for the continuation and completion of the reception and identification procedure. The same decision regulates the details of the transportation of third-country nationals or stateless persons between the Regional Services of the Reception and Identification Service.

2.2. Actions - recommendations by the Greek Ombudsman

The Greek Ombudsman has highlighted the need to improve the identification and care procedure for vulnerable groups³⁷ with recommendations and a public intervention for the problems in the procedures of first reception and identification of vulnerable groups during 2015, inviting the competent authorities to operate RICs following the procedures and standards stipulated by Law 3907/2011.³⁸

More specifically, the Greek Ombudsman considers that in each case the State must ensure the safety of the persons and assure their fundamental rights for access to asylum, temporary accommodation, provision of food, water and ba-

sic clothing items, medical care, information on the rights and procedures, as well as the protection of those persons belonging to vulnerable groups, such as families, pregnant women, children and unaccompanied minors, human trafficking, abuse or torture victims, the elderly, persons with disability, etc.

The Greek Ombudsman had in particular noted that the then applicable laws were not complied with, which provided that the First Reception Centers are the first stage from which all migrants irregularly entering the country go through for the screening process, to identify whether they belong to a vulnerable group. Staffed expediently from available sources, by officers from the Coast Guard or the Hellenic Police, the First Reception services that belonged to the competence of the Deputy Minister of Interior at the time and currently the Minister of Migration Policy, it was ascertained that they were at risk of becoming dead letter. The dispersion of the competences in 2015 among services that belonged to different institutions (the former Ministries of Public Order, Maritime and Interior as regards the Migration competence), it appears that it created an even greater lack of coordination at local level.

As already mentioned during the next months of 2015 arrivals to the islands took on explosive dimensions, and the State took certain measures during August and September in the direction of the Ombudsman's recommendations, among which we should note as quite positive steps, the reinforcement with staff and identification devices by the police on the islands in September for the fast registration of the new arrivals and the organisation of temporary accommodation facilities in Elaionas (Athens) in cooperation with the Ministry of Interior - Division of Migration Policy with the Municipality of Athens. However, there was no permanent facility created, namely a First Reception Center on the islands or Athens, but the First Reception Center wing that had been constructed and remained closed for months in Moria, Lesbos, opened in March 2016, without being sufficient for the screening, according to Law 3907/2011, of all newcomers on the island. Therefore, many of the above recommendations made by the Ombudsman remain valid.

The Ombudsman had then noted the need to protect the substance of first reception, namely the elementary care for basic needs (food, housing, medical care) of the new arrivals, the provision of information about their rights and the protection of those belonging to vulnerable groups. A

³⁷ Greek Ombudsman document dated 23 July 2015 with Ref. No. 202782/28669/2015 SUBJECT: Findings and recommendations of the Greek Ombudsman after visiting detention and reception facilities and competent services for the irregular entry of third-country nationals on the islands of Lesbos, Kos and Leros, on 16-17/6/2015 and 24-25/6/2015 (<http://www.synigoros.gr/?i=human-rights.el.danews.296571>).

³⁸ See also Annual Report 2015, pg. 34.

typical example of deficient registration is the fact that even though the number of new arrivals in Greece in 2015 was nearly elevenfold that of 2014, there was no corresponding increase in the number of requests for accommodation of unaccompanied minors, a fact that highlights the problems in identification and registration during 2015.³⁹

Similar was the reaction of the Greek Ombudsman stressing the need to take measures due to the restriction or the total prohibition of the crossing at the Eidomeni area.⁴⁰ The independent authority has noted since then the need for State co-ordination of the de facto refugee camp in Eidomeni, and for a contingency plan for dealing with possible restrictions in border crossing. The findings and recommendations of the independent authority were the outcome of a visit of a joint team of the Ombudsmen from Greece and FYROM on 17.11.2015 to the temporary refugee camps on the borders of the two neighbouring countries, in Eidomeni and in Vinojug, with the purpose of ascertaining the living conditions and the protection of the fundamental rights of the refugees.

The Ombudsman had at the time also highlighted the State's obligation to ensure their fundamental rights, and noted the need for special consideration for the protection of populations on the move, from smugglers, human trafficking rings or from existing phenomena of financial exploitation.

In early 2016, to support the legislative endeavour for the better organisation of first reception procedures, the Greek Ombudsman submitted comments in the context of the consultation for Law 4375/2016 with regard to the Reception and Identification Service (RIS). Inter alia, the Greek Ombudsman had noted the need for a special provision for vulnerable groups.⁴¹

After the creation of the hotspots on 5 critical islands as Reception and Identification Centers⁴² according to Law 4375/2016 (Lesvos, Chios, Samos, Kos, Leros) and the EU-Turkey Statement of 18 March 2016, the identification

of vulnerable persons remains an issue of vital importance during the reception procedures within 25 days at the hot-spots, however the universal implementation of first reception procedures remains the object to be reached. During an on-site inspection carried out on 26-27.7.2016 at the Samos hotspot, it was found that not all new arrivals undergo a medical check, as required by law.

What actually takes place, is the registration of any vulnerability on the identification file (identification of person and citizenship) of the new arrivals, during their first interview by the Hellenic Police with the help of FRONTEX at the identification division of the hotspot during the initial three-day detention period. Despite the fact that this is an indicative registration (the Greek Ombudsman has asked that the indicative character should be mentioned on the Hellenic Police file), it was found that the medical and psychosocial required procedures upon first reception are not followed in practice for all new arrivals, in order to identify further vulnerable cases that might have been missed by the police's registration, such as e.g. human trafficking victims. If other first reception procedures do not follow, the statistical data for vulnerable persons are based on the police's registration at the hotspot identification division.

The transport of asylum seekers from the islands to the mainland is allowed only after the asylum registration process has been completed, or in cases of particularly vulnerable individuals. The transportation delay is in part due to the slow pace of the asylum registration or identification of vulnerable persons, and in the past, the lack of any appropriate facilities on the mainland. Among other things, this delay has led to serious overcrowding of the facilities on the islands, which were created for far smaller numbers, and an increase of risks in the field of protection.⁴³

2.3. Conclusions In July 2015, at the very onset of the so-called refugee crisis, the Greek Ombudsman stressed the need to create FRCs on the islands, as required by law, and to screen all new arrivals in order to correctly identify any vulnerability they may have.⁴⁴ However, even after the establishment of the hotspots with Law 4375/2016, the reinforcement of first reception ser-

³⁹ Introductory note of Service for the management of Accommodation Applications of Asylum Seekers and Unaccompanied Minors of the National Center of Social Solidarity (EKKA) http://www.ekka.org.gr/portal_docs/forceaccount/picture/25_1072.pdf

⁴⁰ Press Release in November 2015 (<http://www.synigoros.gr/resources/151119-dt.pdf>)

⁴¹ See comments of the Greek Ombudsman on the special care required for families with toddlers or infants in the document dated 26 February 2016 (https://www.synigoros.gr/resources/paratiriseis_gia_sxedio_nomou_tropop_3907_2011.pdf).

⁴² Hereinafter, hotspots.

⁴³ See Press Release of the United Nations High Commissioner for Refugees of 5.1.2017.

⁴⁴ Press release on 27.7.2015 "The Greek Ombudsman is requesting immediate measures for the reception of migrants and refugees on the Aegean Islands" <http://www.synigoros.gr/?i=humanrights.el.danews.296571>

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vices with staff and resources remains⁴⁵ a critical issue for the rational management of mixed flows and for the implementation of the screening in full in order to identify persons belonging to vulnerable groups and requiring special care.

3. Shortcomings in the appropriate handling of unaccompanied minors

3.1. Identification of unaccompanied minors According to UNHCR figures, approximately 38% of incoming third-country nationals only during the January-August 2016 period were minors,⁴⁶ whereas in March 2017, according to the updated statement by the same agency,⁴⁷ the estimated number of unaccompanied⁴⁸ minors in the country amounted to 2100. The estimate of this number is based on the analysis of the referrals to accommodation centers of the National Centre for Social Solidarity (EKKA). In 2015 there were 2248 requests in total to EKKA for referral to accommodation centers, compared to 2390 requests submitted in 2014, although as mentioned above, the number of new arrivals in Greece was nearly elevenfold in 2015 compared to the previous year.⁴⁹ Finally, during the first months of 2017, it is claimed⁵⁰ that there was a relative increase of the arrivals of unaccompanied minors through the land borders with Turkey.

In 2014 there were 451 asylum applications submitted in total by unaccompanied minors, in 2015 and 2016 the applications were 420 and 2,352 respectively, while during

January-February 2017 there have been 440 asylum applications by unaccompanied minors.⁵¹

Apart from the problems listed below regarding access to asylum and family reunification of the general population, especially for unaccompanied minors, the absence of a guardian is an additional difficulty, since they lack the necessary care and guidance.

Unaccompanied minors live:⁵² a) within the Reception and identification centers (RICs), under a regime of relative freedom (VIAL in Chios, Pyli in Kos, Leros and Samos), or restriction of freedom with or without possibility of daily exit (Moria in Lesbos and Fylakio in Evros), with the purpose of their registration and identification, as well as their protection until their referral to Accommodation Centers or “safe spaces”, that is places of temporary and supervised accommodation; b) Open Temporary Accommodation Facilities of Article 10(5) of Law 4375/2016⁵³ c) in Accommodation Centers for Unaccompanied Minors⁵⁴ and d) in safe spaces within the Open Temporary Accommodation Facilities.

The issue of age verification It is a known fact that the majority of third-country nationals entering the country mainly from its east borders, lack any documentation, which gives rise to serious problems, inter alia, in the identification of unaccompanied minors. Today, after enforcement of Joint Ministerial Decision 1982/2016 (Government Gazette, series B, No. 335/2016) and Ministerial Decision G.P.oik. 92490/2013 (Government Gazette, series B, No. 2745/2013), that instituted programs for the medical check, psychosocial diagnosis and support, in relation to third-country nationals arriving without documentation in first reception facilities the former, and asylum seekers the latter, the age of unaccompanied minors is verified through a three-phase procedure. The verification of minority age at the first phase, excludes the second one, and so forth, making the medical

⁴⁵ As regards First Reception staffing and coordination issues during 2016 and up to the first quarter of 2017 see below chapter E.1.

⁴⁶ See statistics of UNHCR Mapping of unaccompanied children at <https://data2.unhcr.org/en/documents/download/50768>. Moreover, according to the Biannual Report of Actions and Findings July-December 2016 of the Mechanism for Monitoring the Rights of Children on the move in Greece, drawn up by the Children's Ombudsman in cooperation with UNICEF, for 2016, the total number of children that arrived is estimated at approximately 64,000, with 37% of new arrivals being children, whereas 17% of the total children arriving are unaccompanied.

⁴⁷ Updated UNHCR status at <https://data2.unhcr.org/en/documents/download/54239>

⁴⁸ As unaccompanied minors we also consider minors who are not accompanied by their parents or persons with parental care, but by relatives (separated).

⁴⁹ Introductory note of the Service for the management of Accommodation Applications of Asylum Seekers and Unaccompanied Minors of the National Center of Social Solidarity (EKKA) that attributes the fact to the registration problems presented in 2015 http://www.ekka.org.gr/portal_docs/forceaccount/picture/25_1072.pdf.

⁵⁰ See op. cit. Biannual Report.

⁵¹ See Statistical data of Asylum Service (7.6.2013 – 28.2.2017) http://asylo.gov.gr/wp-content/uploads/2017/03/Greek_Asylum_Service_Statistical_Data_GR.pdf

⁵² Cases of administrative detention are examined below.

⁵³ See Ombudsman's on-site inspection on 9.1.2017 at the Open Temporary Accommodation Facility in Skaramangas, where there were 110 unaccompanied minors, with 40 separated ones among them.

⁵⁴ The term Accommodation Centers is used, because it is mentioned by EKKA for the placement of minors in accommodation spaces, in contrast to the term Open Temporary Accommodation Facilities that refers to the facilities of Article 10(4) and (5) of Law 4375/2016. The UNHCR accommodation facilities for unaccompanied minors fall under this category.

check the last phase of the procedure. While drawing up the present report, the verification of age appears to still be based mainly on the medical assessment carried out at the hospitals, according to a standard method that includes an x-ray and dental examination, without recording the method followed or other information, while the clinical assessment of the anthropometric figures and the psychosocial assessment is either absent or limited. This makes more difficult the further verification of the scientific correctness of the assessments.⁵⁵ Especially during the period after the EU-Turkey statement entered into force, it is claimed⁵⁶ that, *the particular conditions created in the RICs do not contribute towards a suitable environment for the conduct of specialised medical examinations, such as those required for age determination. At the same time, they exacerbate any stress-inducing factors for the refugee and migrant population, making it difficult for each individual to provide the information required for an age assessment.* The problem becomes more acute by the absence of suitable medical staff, but mostly of interpreters.

Even though the stipulated procedure of the above ministerial decisions is an example of exceptional progress compared to the previous situation, where the verification of minority depended on the judgement of the police officer, the only criterion being the anthropometric characteristics of the third-country national, however, there are still today serious doubts about the proper and systematic implementation of the stipulated procedures,⁵⁷ seeing a preoccupation with the result of the medical check, even when the minor produces copies of documents from the country of origin that determine the age. In conclusion, one could claim that *the implementation of a reliable system for age verification, by adopting specific guarantees, remains a goal to be attained.*

The presumption of minority

In practice we observe the phenomenon, where third-country nationals who have been registered as adults, claim minority at a later time, after their initial

registration.⁵⁸ In such a case they are referred to public hospital departments for medical examinations, as described above, but even after they raise the claim of minority, they continue to be treated as adults, remaining in the same detention spaces as them.⁵⁹ Also, even if they possess documents proving their age, they are not taken into consideration when they lack validation by a competent authority of the country of their issue. Finally, it is worth noting that the cases referred for medical examinations often encounter great delays from the time the claim is made until the actual conduct of the examinations, resulting in their reaching the age of majority in the meanwhile.⁶⁰

3.2. Administrative detention of unaccompanied minors

Administrative detention and protective custody

The issue of administrative detention of minors has been under the scrutiny of the Greek Ombudsman since the start of its operation, but to this day it has not yet become feasible to render detention a truly last resort, at least upon their entry into the country. Of course its duration and conditions differ, depending on the number of arrivals and the policies being implemented; as a result, depending on the circumstances, we sometimes have an inflationary implementation of the measure and sometimes not (e.g. in September 2016, after the conflicts in the RIC of Moria, the unaccompanied minors were moved en masse to other facilities on the mainland).⁶¹ However, it is worth noting that during the 2015-2016 period, the number of unaccompanied minors in detention dropped; an effort was made in the opposite direction to increase accommodation centers.⁶²

There are three legislative initiatives that regulate the deprivation of the liberty of the minors, which is of an

⁵⁵ See report No. Φ 221878/2016 to the Greek Ombudsman regarding the case of a minor for which an age determination act was issued by the Reception and Identification Service, based on a medical document without a prior psychosocial assessment.

⁵⁶ See relevant findings of the DOCTORS OF THE WORLD organisation in The verification of the minority of unaccompanied minor third-country nationals. S. Poularakis, August 2016 <http://mdmgreece.gr/diapistosi-tis-anilikotitas-anilikon-allodapon-skepsis-ke-provlimatismi/>

⁵⁷ See op. cit. report No. 221878/2016.

⁵⁸ See relevant reports No. 223925/2017 and 223926/2017.

⁵⁹ See relevant report No. 223926/2017.

⁶⁰ Similarly, Ombudsman Report The issue of verification of minority of unaccompanied minors of October 2014 at https://www.synigoros.gr/resources/porisma_diapistosi-anilikotitas-asynodefton-anilikon.pdf and recent report No. Φ 223926/2017, referring to long delays in the registration at the RICs by the Greek Council for Refugees.

⁶¹ See relevant publication <http://www.emprosnet.gr/article/87078-sto-pikpa-ta-asynodeyta-prosfygopoyla>

⁶² This finding is included in letter No. 207835/2175/2016 by the Ombudsman to the Hellenic Police Headquarters, and it is based on the on-site inspection carried out on 16.11.2015 at the detention sites of the Aliens Police Division of Attica, as well as on-site inspections carried out later: the on-site inspection dated 11.4.2016 at the EHTA [Special Space for the Stay of Third-country Nationals], in Amygdaleza, Attica, and on 23.8.2016 at the Police Stations of Liti and Kilkis. Of course, during the on-site inspection carried out on 27-30.7.2016, at the RICs of Lesbos and Chios, we found 129 unaccompanied minors.

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administrative nature: a) the recent law 4375/2016, which in Article 14(2) provides for the restriction of the liberty of all irregularly entering third-country nationals, including unaccompanied minors, at the RICs, for up to 25 days, and in Article 46(10) the detention of asylum seeking unaccompanied minors for up to 45 days, and until they are referred to a suitable accommodation facility, an option that must be the last resort, b) law 3386/2005, which in Article 76(3), as in force, allows the administrative detention for the cases of unaccompanied minors who are arrested on the borders of the country, where deportation is possible, and c) Article 30 of Law 3907/2011, that allows the administrative detention of unaccompanied minors arrested on the mainland, for whom return is possible, according to Article 25 of the same law. Law 3907/2011 introduced significant innovations, two of the most important ones being the provision of Article 20 that establishes the child's best interest as a broader-range interpretative guideline for all decisions concerning it, and Article 25, that stipulates, as regards the removal of a minor from the country, the prior ascertainment by the Greek authorities that it will be returned to a member of its family, a nominated guardian or adequate reception facilities in the return country. Since the issue of the return of unaccompanied minors is interlinked with the detention issue, it is obvious that to the extent that the former is infeasible, the latter also becomes inappropriate.

As regards the duration of the detention, it is difficult to record its average length with any accuracy, since there are no sufficient statistical data on this subject. During the on-site inspection of the Ombudsman's team at the Amygdaleza EHPA in April of 2016, the average duration of the stay was 40 days, whereas during the inspection at the Lesvos RIC on 27.8.2016, this time was longer than two to three months, which was a reason why efforts were made to organise exits with the assistance of NGOs. There were however periods, where detention in the police stations, even in the form of protective custody, had lasted up to 45 days.⁶³

Finally, to this date, the matter of improving the conditions,⁶⁴

⁶³ Human Rights Watch Why are you keeping me here September 2016 at: <https://www.hrw.org/report/2016/09/08/why-are-you-keeping-me-here/unaccompanied-children-detained-greece>

⁶⁴ "... In some cases, children said they were made to live and sleep in overcrowded, filthy, bug- and vermin-infested cells, sometimes without mattresses, and were deprived of appropriate sanitation, hygiene, and privacy. All of the children interviewed in police stations, including those who had been detained for more than a month, said they were not allowed to leave their cells", Report of Human Rights Watch 9.9.2016 op. cit. <https://www.hrw.org/el/>

especially for minors, continues to remain open, and in some cases leads to situations of conflict⁶⁵ with adverse consequence, mainly for the minors themselves. The long-term problems include the minimal access of the minors to information about their rights,⁶⁶ the absence of any personalised care and their deficient representation.⁶⁷ At the same time, problems of their daily life are identified, such as shortage of sanitary products, the absence of any entertainment programs on a systematic basis, the shortage of psychologists, social workers and translators - interpreters at times, and the significant shortages in pharmaceutical coverage.⁶⁸ Even during the reception and identification procedure, it appeared that the minors were not informed, with the help of a translator, on their rights and the option of submitting asylum, relocation and family reunification applications.⁶⁹ The above could lead to the observation that to the extent that the conditions in which the protective custody measure is implemented do not meet the demands for a humane and decent treatment, the restriction of freedom, even in the sense of protection, constitutes detention and in fact an onerous one.

The concept of protective custody

While preparing the present document, the majority of unaccompanied minors are held in protective custody until they are referred to an Accommodation Center for Unaccompanied Minors, regardless whether they file an asylum application or not.⁷⁰ The waiting period is the same as the detention time and is determined, as is the latter, by the number of the minors and the availability of the corresponding accommodation facilities. In 2015, this period of time was 32 days. After the closing of the West Balkans corridor and the EU-Turkey Statement, there were unaccompanied minors included in the total number of refugees trapped in the country. This however increased the

[report/2016/09/09/293876](https://www.hrw.org/report/2016/09/09/293876)

⁶⁵ See publication dated 12.9.2016 on conflicts between minors at the RIC in Moria, Lesvos <http://www.kathimerini.gr/874351/article/epikairothta/ellada/3574-asynodeytoi-anhlikoi>

⁶⁶ It is further noted that legal aid was provided to 357 asylum seeking unaccompanied minors, according to a relevant memo of the UNHCR to the Greek Ombudsman in March 2017.

⁶⁷ Findings from the Ombudsman's on-site inspection on 11.4.2017 at the EHPA of Amygdaleza.

⁶⁸ See GCR mission to Lesvos, in November 2016 at <http://www.gcr.gr/index.php/el/action> and findings of the Municipality of Athens on the EHPA of Amygdaleza at <http://www.tovima.gr/society/article/?aid=667592>

⁶⁹ See note 62.

⁷⁰ See above cited on-site inspection of the Greek Ombudsman on 23.8.2016 at the Police Stations of Liti and Kilikis.

waiting time⁷¹ for the accommodation centers, since people already staying in them were not leaving them to travel to Northern Europe. This fact inevitably led to the extension of the detention of the minors in the form of protective custody both in the RICs and the Special Spaces for the Accommodation of Third-country Nationals (EHPA) in Amygdaleza, as well as in the police stations.⁷² A result of this practice was the fact that the asylum seeking unaccompanied minors, whose liberty was restricted according to Article 46(10) of Law 4375/2016, were still detained after the lapse of the 45-day period, provided for by the above article. This detention, despite having the sense of protective custody, was now based on the provisions on detention of Law 3386/2005.

Even though the concept of protective custody, with the exception of the provision of Article 46(10) of Law 4375/2016, is not specified precisely in the relevant laws on detention, Administration invoked it also in the past to justify the restriction of the liberty of unaccompanied minors.⁷³ Protective custody is provided for under Article 118(2a) of Presidential Decree 141/1991, which includes, inter alia, minors who have voluntarily or involuntarily disappeared from home, until returned to their family. It is noted that paragraphs 3 and 4 provide that “3. Protective custody is not considered an arrest in the sense of the Code of Criminal Procedure and 4. The persons placed under protective custody shall not be locked up in police station cells, unless the danger they pose to themselves or to others cannot be prevented otherwise”. Gradually, towards the second half of 2016, the number of unaccompanied minors that remained under protective custody was reduced.⁷⁴

The particular issue of treatment by the police A particular issue that highlights, in our opinion, the police's confusion in the effort to operate based on protection, instead of repression terms, was also the issue of the transport of the unaccompanied minors from pre-removal (detention) centers to

accommodation centers. Even though the specific action had basically been assigned to NGOs, when its funding ceased, their transport from the borders to mainland facilities was taken over by the Hellenic Police, which handcuffed the minors, giving their escort the characteristics of a police detainee transfer. The Greek Ombudsman underlined that unaccompanied minors transferred to accommodation facilities are not detainees, and are therefore not to be transported as detainees but escorted by police officers for reasons of protection.⁷⁵

3.3. The treatment of unaccompanied minors in freedom

Safe and controlled accommodation spaces for unaccompanied minors within the Open Temporary Accommodation Facilities for Refugees and Migrants.

The inappropriate conditions of implementation of the protective custody measure lead to the organisation of safe spaces, which were created within the Open Temporary Accommodation Facilities for Refugees and Migrants. The Ombudsman together with the Prosecutor's Office of the Supreme Civil and Criminal Court, in April 2016 carried out a visit at the Temporary Accommodation Facility of Diavata (Thessaloniki) in order to explore the possibility of safely accommodating temporarily the unaccompanied minors

that were detained in police stations in the nearby Kilikis Region.⁷⁶ Subsequently, on 7.6.2016 with its circular No. 4375, the Prosecutor's Office of the Supreme Civil and Criminal Court, addressing the Prosecutor's Offices of the country, asked for the placement of unaccompanied minors who were detained in police stations, in safe zones of the Open Temporary Accommodation Facilities. The Ombudsman recognised this as a positive development.⁷⁷ Such zones were entered into pilot operation in 2016 in three facilities, with a total capacity of 110 places, in Diavata and Lagkadikia (Thessaloniki) and also in Alexandreia of Imathia Region, but the facilities in Lagkadikia and Imathia were then shut down, whereas in the end of 2016, a new facility opened in Elaionas, Athens. There is currently a plan⁷⁸ for the operation of

⁷¹ See Statistics of 2015 of the Service for the management of Accommodation Applications of Asylum Seekers and Unaccompanied Minors of the National Center for Social Solidarity (EKKA) (http://www.ekka.org.gr/portal_docs/forceaccount/picture/25_1072.pdf) and Press Release of the Greek Ombudsman 30.3.2016 (<https://www.synigoros.gr/resources/dt-asynodeytoi-anilikoi-3032016.pdf>)

⁷² E.g. in September 2016, there were 39 unaccompanied minors detained in Police Stations mainly in Northern Greece.

⁷³ Greek Ombudsman's Special Report: Administrative Detention and Deportation of Minor Third-country Nationals 2005.

⁷⁴ In the biannual report op. cit., the start of the decrease is pinpointed in July 2016, attributed also to the increase of the accommodation facilities.

⁷⁵ See Ombudsman's older document on case No. Φ 164738/2013.

⁷⁶ See <http://www.O-18.gr/gia-megaloyis/nea/episkepseis-synigoroy-toypaidioy-se-choroy-ypodochis-kratisis-kai-filoksenias-asynodeyton-anilikon>

⁷⁷ See relevant letter to the General Secretary for Reception at <http://www.O-18.gr/downloads/Epistoli-safe%20spaces.pdf>

⁷⁸ See the relevant statement of the special associate of the Minister for Migration Policy, during a seminar of the Doctors of the World held at the

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such spaces in 25 to 30 facilities across the country, for 800 to 900 unaccompanied minors. **However, we emphatically stress the fact that this measure can be implemented only on a temporary basis, and until their transfer to Accommodation Centers for Unaccompanied Minors within reasonable time, since these spaces lack the necessary specifications for the long-term stay of minors, especially when they do not meet the necessary conditions for their safe stay.** Even though there is no documented study on the cost of operation of these safe spaces, according to a UNICEF representative in Greece, it is not less than the operating cost of the Accommodation Centers.⁷⁹

Stay in RICs and Open Temporary Accommodation Facilities

The stay in RICs and the Temporary Facilities has the purpose of registering and identifying the minors, as well as protecting them until they are referred to Accommodation Centers or more recently, to safe spaces. Their liberty is restricted only in the Lesvos (with possibility of exit) and Evros RICs, whereas in the other RICs of the country, unaccompanied minors are living in freedom, in full or in part, inside them. It was not possible to ascertain whether this different treatment was due to reasons related to the minor's person or depended on the operating conditions of each center. In these cases it should be noted that on the one hand they are without supervision, and on the other hand that there are no rules of operation which they must comply with. This practice, which is in direct contrast to a long detention, has the same problems as detention, to the extent that there is no special provision for this vulnerable group, since it allows the development of unlawful situations and exploitation phenomena.

On the other hand, unaccompanied minors in freedom, are outside the safe spaces of the Open Temporary Accommodation Facilities that were developed also in Accommodation Centers, after their referral by the competent Prosecutor, through the National Center for Social Solidarity. These Centers, numbering 46 in November of 2016, had a capacity of 1191 persons, and were accommodating 861 unaccompanied minors. In March 2017, 53 were recorded (for

long and short stay),⁸⁰ dispersed across the country, which in their majority are private and are operating under the responsibility of different agencies, such as legal entities of the broader public sector operating under Private Law (e.g. the Youth and Life-long Learning Foundation), but mainly under the responsibility of NGOs. Their operation is governed by the *General Rules of Operation of the Accommodation Facilities for Third-country Nationals that are operating under the care of the First Reception Service* (Government Gazette B3295/2014) and by the *Regulation for the quality and safety specifications of civil society organisations for processing individual reception procedures in Open Accommodation Facilities operating under the supervision of the First Reception Service* (Government Gazette B 1261/2016). However, there are no particular specifications for facilities that accommodate unaccompanied minors.

Guardianship of unaccompanied minors

The deficiencies of the Greek system for the protection of unaccompanied minors are apparent also in the matter of guardianship. Up to now, the duties of temporary guardian are undertaken mainly by the Public Prosecutor of the area where the minor was found, as well as persons from the accommodation facilities, after appointment either by a prosecutor's order or a court decision. Today, there is a relevant provision in Article 19(1) of PD 220/2007, stating that the competent authorities shall promptly take the suitable measures in order to ensure the necessary representation of the unaccompanied minors, and to this end, the competent authorities inform the Juvenile Prosecutor, and where there is none such, the competent local Prosecutor of the First Instance Court, who acts as a temporary guardian and takes the necessary steps in order to appoint a guardian to the minor. It should be noted however that the provision is interpreted quite strictly by certain prosecution authorities, whereas the practical inability of the prosecutors to exercise the duties of a guardian is also recorded.⁸¹ In practice, the large number of the unaccompanied minors renders impossible the exercise of the duties of the temporary guardian by the local Public Prosecutor of the First Instance, whereas the assignment of guardianship to members of the accommodation centers where the minors are living, poses the risk of a conflict of

Theocharakis Foundation, on the subject of "The protection of unaccompanied minors in Greece", see in a publication in Efimerida Ton Syntakton (EfSyn) newspaper, Special zones for unaccompanied refugee children <http://www.efsyn.gr/arthro/eidikes-zones-gia-ta-asynodeyta-prosfigogopyla>

⁷⁹ See as above publication in EfSyn.

⁸⁰ UNHCR updated status of unaccompanied minors (<https://data2.unhcr.org/en/documents/download/54239>)

⁸¹ I. Papageorgiou, Unaccompanied minors seeking asylum in Greece, *Elliniki Epitheorisi Evropaiou Dikaiou* 2:2009 pg. 164.

interest between them and the persons who are responsible for their daily care.

However, the absence of a guardianship system has been recognised both by the European Court of Human Rights (ECtHR) in its decision dated 5.4.2011 in the case of *Rahimi versus Greece*, and in a Report of the Council of Europe's Commissioner for Human Rights⁸² underlining on the one hand the dysfunction of the institution, and on the other hand encouraging the Greek authorities to review the relevant laws. To this end there is a draft law pending at the Ministry of Labour, Social Solidarity and Social Insurance, which has not yet been brought for voting to date.

3.4. Closing observations - Recommendations

The identification of the vulnerable group of unaccompanied minors is an issue of critical importance, since the further course of the minor and the activation of the protection system depend on it. All three stages of the stipulated procedure must therefore be fully complied with, both by the RICs and by the competent services during the review of the application for international protection. At the same time, the presumption in favour of the minor must be respected each time there is any doubt regarding the minor's age. The Ombudsman further recommends:

- The fact of inadequate information being given to unaccompanied minors in a language they understand regarding their rights renders necessary the implementation of the relevant provision by competent services related to this work, or potentially, other supervised or certified non-governmental entities, as provided for under Article 5 of Directive 81/2004/EC, and not exclusively by the police authorities.
- As noted above, after the adoption of Law 4375/2016, we witness the phenomenon where minors continue to be detained after the lapse of their liberty restriction time specified in Articles 14 and 46(10), with the implementation of the provisions on detention of Law 3386/2005, each time a suitable accommodation facility is not found. Therefore, we recommend that the detention of unaccompanied minors for protection reasons be limited to the minimum time, and at the same time, a legislative initiative be undertaken regarding the implementation of the

measure, in an effort to prevent any possibility of detention in facilities that are unsuitable for the minor's protection, such as police station detention cells, etc.

- The smooth and safe operation of the facilities where unaccompanied minors are living, cannot be achieved without the appropriate operating specifications, both with regard to safe zones within the Open Temporary Accommodation Facilities and for the other Centers that host unaccompanied minors. The establishment of internal operation regulations is also imperative, in order to have a uniform treatment that is suited to the minor's particular needs, as well as a reliable supervision system.
- Finally, the appointment of a permanent guardian will play a critical role in protecting and guaranteeing the rights of unaccompanied minors. The minors' representation, as well as the management of their daily problems, are impossible without such a person, who, considering the particular circumstances, is essentially exercising their guardianship. Significant rights in the minors' lives, such as access to education and health, as well as general issues of their social inclusion, become a dead letter without the existence of a guardian.

4. Obstacles and delays in the access to asylum

4.1. The problem In 2015, the European borders are put to the test at the sea borders of Greece. From another point of view, what is at stake here is the survival of the right of political asylum in Europe. The right of access to international protection is put to the test by the massive entry of mixed migrant, but also to a great extent potentially refugee, populations, into the Greek islands.

This is a challenge of disproportionate size for the administrative mechanism, which, however, until November 2015, was not encountered in the asylum procedures, but in the registration and identification procedures by the Police, as well as the reception of the new arrivals in suitable conditions, by the Ministry of Interior - Migration Policy Division. The new arrivals, after the procedures on the islands, obtained an official note of removal from the country (most nationalities) or certificate of non-removal for humanitarian

⁸² (CommDH [2013]6, para 146-148 and 153).

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reasons (Syrians, etc.)⁸³ and moved through an unofficial point of exit (Eidomeni) towards FYROM and neighbouring countries, along the so-called Western Balkans Route. As a result, we see the apparent paradox of the low rates of asylum applications in 2015⁸⁴ compared to the large number of people arriving to the islands,⁸⁵ especially during the 2nd half of the year.

When the borders closed in late November 2015, the EU's cohesion appears to be under threat, not only from the unilateral border protection actions, but also from the low response by Member States to relocation applications of asylum seekers.⁸⁶ The EU's tolerance also seems to run out when addressing the delay in the construction and operation of hotspots on 5 islands handling the main volume of the arrivals: Lesbos, Chios, Kos, Samos, Leros.

As regards the Greek State, the weight of the handling is transferred, apart from the hotspots, towards the Asylum Service, which in 2016 is facing a double challenge: to ensure access to asylum, on the one hand to the populations trapped after the borders closed and are living in temporary accommodation facilities on the mainland, and on the other hand to the new arrivals at the Reception and Identification Centers (RICs) as the hotspots were named, as administrative units of the Ministry of Interior - Migration Policy Division⁸⁷ that were established by Law⁸⁸ on the 5 islands immediately after the EU-Turkey Statement of 18 March 2016. The law, for border procedures in particular, shortens the deadlines for filing an appeal and institutes the possibility of assistance by EASO⁸⁹ to the Asylum Offices operating inside the hotspots. At the same time, the Statement renders mandatory the examination of the admissibility of the applications as regards the safe third country concept, placing onto the Asylum Service the enormous burden for the substantial implementation of the provisions agreed by the EU

regarding the readmission into Turkey of Syrians as well as citizens of other countries. The rapid processing of the applications at the second degree by the Appeals Authority in order to implement procedures of deportation/readmission is the goal of the European Commission from 2016 to this date. *The main problem of asylum access in 2016 therefore lies with the failure of the Asylum Service to respond at a swift pace to the applications, not only at the temporary accommodation facilities on the mainland, but also at the hotspots, where asylum seekers and migrants alike have their liberty restricted. Furthermore, questions regarding the substantial access to international protection are raised both by the small numbers of asylum statuses granted to the islands and the content and method of implementation of the Statement*, an issue which was brought before the Supreme Administrative Court (Conseil d'Etat) in 2016, as was also the issue of the restructuring of the Committees of the Appeals Authority in June 2016 (Law 4399/2016) in order to comprise administrative judges by 2/3.

The above are added to the standard problem of reduced access to asylum of those living freely in the country.

4.2. Background

The system of award of international protection in Greece before 2015

The problem of access to asylum and the procedure for the examination and recognition of beneficiaries of international protection among the irregular entries into the Greek territory during the past two years, is in direct correlation with the system's pathology during these past years. The excessive delays during the receipt and examination of the asylum applications at the 1st and 2nd degree was a chronic issue, that was practically equivalent with the failure of the competent authorities to handle the large volume of accumulated applications, already since 2003.⁹⁰ Despite the consecutive legislative amendments,⁹¹ up to 2015 the rationalisation and effective operation of the country's asylum system had not been achieved, resulting in an already problematic situation becoming even worse by the rapid increase of newly arriving applicants. It is quite telling that on 6.9.2016 there were 7,920 applications still pending before the Appeals Committees of the Hellenic Police, submitted under the pre-existing law (Presidential Decree 114/2010 and the ones prior to it). According to

⁸³ A Hellenic Police circular (1604/15/1423412/10.8.2015) clarified that this certificate also covers newly incoming citizens of Syria, Yemen, South Sudan, Palestine, Eritrea, Somalia.

⁸⁴ 13,917 asylum applications in 2015, the 3,495 of which were by citizens of Syrian origin http://asylo.gov.gr/wp-content/uploads/2016/01/Greek-Asylum-Service-statistical-data-2015_gr.pdf

⁸⁵ According to UNHCR figures (www.unhcr.gr/statistics, 14-1-2016) there are 851,319 arrivals by sea in Greece in 2015.

⁸⁶ The European Commission's action plan in September 2015 provided for the reception and relocation of asylum seekers from Syria, Iraq and Eritrea.

⁸⁷ Since November 2016 an independent Migration Policy Ministry.

⁸⁸ Law 4375/2016.

⁸⁹ European Asylum Support Office.

⁹⁰ See relevant interventions by the Greek Ombudsman from 2003 onwards.

⁹¹ PD 61/1999, PD 90/2008, PD 81/2009, PD 114/2010, Law 3907/2011.

the Ombudsman's experience from the handling of relevant reports, these are applications that were initially submitted as far back as 10 years ago. Moreover, on that same date, the examination at the 2nd degree of another 3000 asylum applications by the Committees of the Appeals Authority was still pending, since they had ceased their operations for a long period of time.

The problem of access to the asylum service in Athens

The Greek Ombudsman has repeatedly noted as a particularly positive development from the aspect of procedure quality and compliance with the guarantees of the law, the

establishment of a non-police service, namely the new Asylum Service which began operations in June 2013,⁹² acknowledging the effort put into its correct and effective operation. However, after two years of its operation, in 2015 the right of anyone wishing to be granted any form of international protection to submit an asylum application should be ensured in practice at all times and in a seamless manner. This did not occur even in Attica, taking into consideration the large number of persons who attempted to approach the service to submit asylum applications in person, as required by law, but vainly, considering that the Regional Asylum Office of Attica accepted less than 20 people a day, which meant that the rest of them had to re-appear on a daily basis. Because refugees from Syria - and other places - came to Greece even before 2015. In December 2014, the Syrians dynamically requested to be heard by organising a sitting protest in Syntagma Square, leading to the positive result of launching a special accelerated process for them. However, individual applicants continue to be unable to access the Regional Asylum Office of Attica.

The Ombudsman notes that there should be no margin left for the impression that one, even if Syrian, must organise a sitting demonstration in Syntagma Square in order to be able to access the asylum service (case No. 193754/2014). The queues by people interested in submitting asylum applications, including a significant number of Syrians or other vulnerable cases, were a frequent phenomenon outside of the new asylum service up to the first half of 2015, bringing to mind similar images from the past at the Aliens Police Division of Attica.⁹³

⁹² On 7.6.2013, as a civic service under the Minister of Public Order and from January 2015, the Deputy Minister and current Minister of Migration Policy.

⁹³ Annual Report 2015, pg. 27.

How things stand in 2015

The Greek Ombudsman had highlighted the strongly increasing numbers of migrants and refugees arriving already in 2014, and had asked that the operational shortcomings of the first reception services were addressed promptly, and that they should include Asylum Offices with adequate staffing.⁹⁴ The massive inflow of migrants and refugees at the country's sea borders peaked in the summer of 2015, exerting asphyxiating pressure on the local authorities and **highlighting the gaps in the organisation and operation of first reception⁹⁵ which was and remains the first link in the chain of the management of mixed populations, due to the task of identification and verification of vulnerable cases, and mainly those entitled to international protection according to the provisions of Law 3907/2011.**

The Ombudsman, with a public intervention after his visit in June 2015 on the islands of Lesbos, Kos and Leros, **recommended**, among other things (such as the coordination of the co-competent services at central and local level with management plans for each island and plans to decongest the critical services), the operation of First Reception Centers with the procedures and specifications imposed by law.

Over the next months, entries into the islands took on explosive dimensions, and in August and September the State took certain measures in the direction of the Ombudsman's proposals, e.g. the closed First Reception Center wing in Moria, Lesbos, opened, without however being adequate for screening, according to Law 3907/2011, for all arrivals on the island. These recommendations made by the Ombudsman were still valid and the regional offices, or rather asylum teams on the islands were still understaffed in 2015, while some avoided (Lesvos, 2015 and 2016) providing any substantial data to the Ombudsman, referring to the central service.

⁹⁴ Annual Report 2014, pg. 152 et seq.

⁹⁵ In June 2015, teams from the Greek Ombudsman visited Lesbos, Kos and Leros, islands of the first line in terms of entry rates, and discovered that the services responsible for reception and management of irregular migrants arriving from the country's sea borders at best were unable to handle in a timely fashion the flows they were receiving, and were implementing only a small part of the procedures, whereas there were no First Reception Centers on the islands, not even in Lesbos where a relevant wing had been constructed and remained locked up. Using officers with police duties, from the Coast Guard or the Hellenic Police, to staff the First Reception services, falling under the competence of the Deputy Minister of Interior, it was found that they were at risk of becoming dead letter. The dispersion of the competences between services belonging to different agencies (the former Ministries of Public Order, Maritime, Interior regarding the Migration competence) appears to have created an even greater lack of coordination at local level.

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The fact that the numbers of applications compared to the number of new arrivals were low saved the day, as mentioned above (13,917 asylum applications in 2015, with 851,319 arrivals by the sea borders,⁹⁶ a 1/61 ratio), as long as the routes to the Western Balkans corridor were open, as well as the postponement of removal provided for by law in the cases where return to the country of origin is not possible, an interpretation adopted by the Hellenic Police with a circular for Syrian citizens, 3 years however after the entry into effect of Law 3907/2011 and with constant recommendations by the UN for non-refoulement to Syria. In 2015, the Greek Ombudsman repeatedly **recommended**⁹⁷ a similar implementation of the law also for Iraqi citizens,⁹⁸ a recommendation which the Ombudsman repeated in many cases, until the issue was resolved in November 2015 with a relevant circular decree of the Hellenic Police⁹⁹ on including the Iraqis under the non-refoulement status of the new Article 78A of Law 3386/2005. It would of course be an exaggeration to attribute the change in the interpretation of the law exclusively to the persistence of the Greek Ombudsman: The relevant decree issued by the Hellenic Police takes into consideration the inclusion of the Iraqi asylum seekers in the relocation program to another Member State of the European Union.

But what changed in the management of the arriving, potentially refugee populations in July 2015? When the conditions of the principle of non-refoulement apply, the procedure followed is no longer a deportation decision and then a removal postponement, but a certificate of non-removal is granted from the start for humanitarian reasons. This regulation of the new article 78A of Law 3386/2005, which occurred with Article 18 of Law 4332/2015, is a very positive development, in response to the Ministry of Interior towards the UNHCR and the Greek Ombudsman, and is of course adopted during a period when the goal is to simplify procedures and speed up the processing of the cases that are massively arriving. A Hellenic Police circular in August

2015¹⁰⁰ clarified that this certificate also covers newly incoming citizens of Syria, Yemen, South Sudan, Palestine, Eritrea, Somalia, and in November, as mentioned above also of Iraq.

Skype: a technical solution that has become part of the problem of access to asylum

The Asylum Service in 2015 launched a system for scheduling, through skype, appointments for the registration of asylum applications, which is still implemented to this day.

The Greek Ombudsman in 2015 **submitted** two related observations: a)

The above restrictive system for the receipt of asylum applications appears to be in contrast with the principle of the universal, continuous and unhindered access to the asylum procedure, to the extent that the system of registration via skype cannot respond to a large number of calls. b) It poses risks for fundamental issues, because during the period between the scheduling of the registration through the Skype application and the final submission of the asylum application there is a very real risk for the arrest, detention and return of the “potential asylum seekers”. Both these issues were increasingly current throughout 2016, since the main problem for the free applicants, was and still is the difficulty to access the asylum procedures, especially the Regional Asylum Office of Attica (in 2016 also the Regional Asylum Office of Thessaloniki).¹⁰¹

It is understandable that the weight of the Asylum Service in 2016 has now shifted to the temporary accommodation facilities on the mainland and the examination of the applications at the hotspots. However, the collateral loss appears to be the applications from the rest of the population, in combination with the asylum application receipt system only via skype. **The Greek Ombudsman recommended and continues to recommend** a flexible system for vulnerable or urgent cases,¹⁰² as well as the prevention of the arrest of those who have booked an appointment via skype, by recording them in the electronic file for the Mapping of Third-country Nationals, as is the case with the pre-registration of asylum applications.

⁹⁶ See note 81.

⁹⁷ Cases No. Φ 197333, 199117, 201627 and 204275/2015.

⁹⁸ The Greek Ombudsman, based also on the position of the UNHCR as regards non-detention and the impracticability of the return of Iraqi citizens (UN Recommendation of October 2014 <http://www.refworld.org/docid/544e4b3c4.html>.) noted that in their case the administrative detention ceases to serve its purpose, becoming incompatible with Article 24(4) of Law 3907/2011 and contrary to the principle of proportionality of liberty depriving measures (Article 5(3) of the Constitution, Article 5 ECHR (decision of the ECtHR, Tabesh versus Greece, Application No. 8256/07, (2009), conviction of our country for detention due to impossible deportation).

⁹⁹ Circular 1604/15/2189144/30-11-2015.

¹⁰⁰ Circular 1604/15/1423412/10-8-2015.

¹⁰¹ In some cases, the interested parties served an application via court bailiff, claiming force majeure by the inadequacy of the service to respond to the connection via skype (cases No. Φ. 219555, 219556/2016 etc.).

¹⁰² There are cases that are not even covered by skype's communication languages (case No. 215904/2016).

4.3. In 2016 a double challenge for asylum in Greece: temporary accommodation facilities on the mainland and hotspots after 20.3.2016

After the surge of the refugee-migrant flows of the previous year,¹⁰³ in 2016 the Greek Administration came across two big challenges: on the one hand the closing of the borders on the so-called “Western Balkans Route”, which resulted in the trapping of mixed, refugee and migrant, populations on the

Greek mainland, and on the other hand the EU-Turkey Statement of 18 March, further to which the services in the hotspots on the five islands had to bear the burden of the detention of all new irregular arrivals at the sea borders, with the purpose of their rapid readmission into Turkey after their identification.

The numbers are indicative of the administrative problems: in mid-November 2016 there were approximately 26,000 persons in temporary accommodation facilities on the mainland, and approximately 16,000 people who crossed the sea borders, at the hotspots at nearly double their capacity overall. In addition, there are around 5700 living in apartments under the housing rental program of the UNHCR and another 5000 in other facilities funded by UNHCR (hotels, guest houses, etc.). According to the official data of the Central Coordinating Body for the Management of Migration 9,000 people are estimated to be outside accommodation facilities, i.e. they cannot be found anywhere. As regards the last category, there is the possibility that they have left without following legal border crossing methods.

Delay in access to asylum in the temporary accommodation facilities

The main problem that emerged from reports to the Ombudsman was the inability of people living in temporary accommodation facilities of mainland Greece to access the asylum process for months (cases No. 214896, 215349, 215823/2016 etc.). The pre-registration of the asylum applications was the first and most important step in personalising the needs of these people, and it was achieved with the substantial contribution of UNHCR and EASO in June and July 2016. The pre-registration of 25,692 people resulted in the granting of a corresponding card with a one-year duration, which constitutes a legal certificate for residence in the country, without con-

ferring full rights to the asylum seeker (employment), with a serious delay for those who wish to be included in family reunification procedures (case No. 8556/2016). However, information provided by the Asylum Service with a public announcement about the schedule of the final registration until January and then in February 2017 (press release on 21.1.2017) is in any case an example of a responsible Administration.

Asylum procedures at the sea borders after the EU-Turkey Statement

A key priority of the migration policy proved to be the rapid examination of the asylum applications of those who crossed the sea borders after 20 March and were held at the hotspots for readmission into Turkey. The asylum offices however at the hotspots had a very small number of staff, which was not sufficient to meet the volume of applications they received, whereas the reinforcement with staff by EASO was gradual, and with significantly fewer people than those requested. The delays and prioritisations of certain national groups or vulnerable persons (e.g. families) by the Asylum Offices operating inside the hotspots, caused the dissatisfaction of those waiting for months for the processing of their application or its simple submission (indicative cases No. 213698, 218420, 218700/2016), creating conflicts and riots inside the hotspots and a chain reaction for the social peace and coexistence with the residents of the islands.

For the Greek Ombudsman, it is of the utmost importance to staff the local asylum services and in particular those operating in the hotspots and to ensure their systematic operation, with a strategic prioritisation that does not however leave entire population groups exposed to months of detention due to the wait for the submission of an application, leaving impressions of exclusion from international protection in order to serve a pre-agreed migration policy.

The increasing contribution of EASO on the borders

The role of EASO in the conduct of interviews at the hotspots gave rise to reasonable questions, considering that Law 4375/2016 provided (Article 3) for the possibility of processing separate procedures of the Asylum Offices of the RICs by the EU agency, but with the reservation of exercising public power (case No. 215914/2016). Reports however highlight the conduct of interviews exclusively by EASO staff, a practice that is covered by an amendment of the law at the end of June (Law 4399/2016). It was reported to

¹⁰³ See Annual Report 2015, pg. 185 et seq.

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the Ombudsman that in asylum interviews at the 1st degree conducted by EASO staff, no information of vulnerability was taken into consideration (serious injury, torture) recorded by the reception services. This issue however pertains to the implementation of uniform rules and criteria by the Asylum Service, which is responsible for the final decision, as well as the need to have a database that is common for the First Reception and Asylum Service, services that both belong to the Ministry of Migration Policy. The Ombudsman considers that any contribution by an EU service should meet the guarantees required by law (which is broadly a European asylum legislation), and the same substantial and transparent criteria for the verification of the need for international protection. The lack of a common database at the closing of 2016 raises questions regarding the adequate coordination of the services operating in the hotspots and the assurance of the rights of the parties involved (cases No. 218041, 218667/2016).

Guarantees of safe third country The implementation of the EU-Turkey Statement of 18 March transfers to the asylum services at the 1st degree, and subsequently to the Appeals Authority, at the 2nd degree, the responsibility to decide about readmission to Turkey, as a safe third country for submission of asylum applications, both of the Syrian citizens, with rejection as inadmissible of the asylum applications in Greece, as well as of other third country nationals.¹⁰⁴ In respect of the procedure, there is great pressure for the effective implementation of the EU-Turkey Statement regarding the fast processing at the 2nd degree of the asylum applications filed in the hotspots. This pressure is also expressed with a document dated 5.5.2016 of the head of the Directorate General for Migration of the European Commission to the Ministry of Interior at the time, regarding the safety guarantees provided by the legal framework of Turkey for the protection of the Syrian and third-country citizens as regards the Geneva Convention for Refugees. The Greek Ombudsman noted, as regards the case law of the European Court of Human rights (decision of 4.11.2015, Tarakhel versus Switzerland) that cases should be judged on an individual basis and specific and detailed guarantees should be provided for the conditions of reception/accommodation and the protection of the family unity in the third country (case No. 215182/2016).

However, 2000 cases from 3.4.2016 until 20.7.2016 had been submitted to the Appeals Committees of Presidential Decrees 114/2010 (more than 8000 cases pending from the past, with regard to which see below) and 1500 at the new Appeals Authority from 21.7.2016 to the end of September, until the reformation of the Authority with an amendment to Law 4399/2016 aiming at changing the composition of the Appeals Committees. Their composition by two thirds by active administrative judges by virtue of Article 86 of Law 4399/2016 caused an application for judicial review before the Supreme Administrative Court (Conseil d'Etat).

Regarding the award of a refugee status, according to the Asylum Service figures provided, it is showing a decreasing trend from 2015 to 2016:

Decisions on the substance at the 1st degree

6,977 in 2016 and 8,430 in 2015, out of which:

Refugee status

1,501 in 2016 (22%) and 3,647 in 2015 (43%)

Rejecting decisions

5,263 in 2016 (75%) and 4,435 in 2015 (53%)

Subsidiary protection

213 in 2016 (3%) and 348 in 2015 (4%)

Respectively, the decisions on the substance at the 1st degree from the islands in the period from April to 31.12.2016 indicate low recognition percentages and high inadmissibility percentages:

1,704 decisions of inadmissibility

148 recognition of refugee status

15 subsidiary protection

The corresponding figures for **decisions at the 2nd degree on the substance** regarding appeals from the islands show an even greater opening of the gap: 533 rejections by the Committees of the Appeals Authority during the period 20.7 - 20.12.2016 and only 2 positive decisions during this period (91 positive decisions of the old Appeals Committees up to 20.7.2016 and 21 negative decisions).

4.4. Access to asylum means substantial conditions for the exercise of the right The substantial exercise of the right to access international protection requires on the one hand the timely provision of information to the new arrivals detained for return, deportation or readmission about the

¹⁰⁴ See the critical comments of UNHCR <http://www.refworld.org/cgi-in/texis/vtx/rwmain?page=search&docid=56f3ee3f4&skip=0&query=legal%20considerations&coi=GRC>

right to request international protection in a language they understand, and on the other hand guarantees of family unity, complete information, also in writing, in their language and in the presence of their attorney in case of withdrawal. This issue was raised by the Ombudsman in the case of six Iraqi women held separately from male members of their family at the Police Department of Messinia, while their readmission was pending (case No. 220665/2016). The clarifications on the existence of written information, an interpreter, etc., requested from the Hellenic Police on 7 November 2016, could not be answered up to the completion of this report. The relevant questions on the case of readmission to Turkey on 20.10.2016 of Syrian citizens who claimed that they had submitted a statement of intention for the submission of an asylum application in Leros (case No. 220930/2016) also remained unanswered. Especially as regards the guarantees for access to asylum of detainees, with Article 46 of Law 4375/2016, with which our domestic law was harmonized with relevant Article 8 of Directive 2013/33/EU, several recommendations submitted by the Ombudsman were adopted,¹⁰⁵ such as detention remaining a measure of exception against those submitting an international protection application while detained, requiring a reasoned judgement, with prior evaluation on an individual basis on the non-application of alternative measures, its extension being subject to judicial control, establishing a maximum time limit for detaining minors, etc.

Finally, the Ombudsman submitted in October a detailed opinion to the Ministry of Migration Policy on the draft law on the conditions of reception of applicants for international protection according to Directive 2013/33/EU (recast 29.6.2014), with proposals for improving protection. Specifically it recommended that there is a clear call to include in the definition of vulnerable persons with special reception needs requiring international protection, also cases of victims of violence on grounds of gender, sexual orientation or gender identity, with references to the concepts of Article 10 of PD 141/2013.

It should be noted however that it is very positive that the Asylum Service keeps information on victims of torture, rape or other form of sexual violence, something which will facilitate their special treatment, in contrast to other Member States.¹⁰⁶

¹⁰⁵ Annual Report 2014, pg. 177-178.

¹⁰⁶ In 2016, 577 asylum seekers were recorded as victims of torture, rape or sexual violence, 190 of which were women. According to FRA, only Greece keeps

The independent authority further noted on our country's obligation under the aforementioned Directive to establish mechanisms for monitoring and scrutinising the standards of the conditions of the reception of asylum seekers, and to inform the European Commission, that it would be useful to include the Ombudsman as the primary independent institution, whose competence already covers the external monitoring of the reception conditions.

4.5. Relocation of asylum seekers to other Member States

A key provision of the EU-Turkey Statement of 18.3.2016¹⁰⁷ was the resettlement of one Syrian from Turkey to the EU for each Syrian who would return to Greece from Turkey after 20.3.2016.¹⁰⁸ This clause was based on compliance with the commitments of the Member States on 20.7.2015 to accept the relocation of asylum seekers from Greece and Italy, commitments that corresponded on 18 March 2016 to 18,000 places, as well as the additional distribution of 54,000 new relocation places.¹⁰⁹ The European Commission, in assessing the resettlement of 2,716 Syrians from Turkey in 2016 to eight Member States,¹¹⁰ considers that there is a positive pace that should continue.¹¹¹ The Ombudsman however observes that 13,450 applications of Member States for resettlement from Turkey in 2016 and 2017¹¹² cannot be considered sufficient based on the aforementioned commitments as well as the number of Syrians that seek international protection.

relevant records in contrast to other 13 Member States which are mentioned in the relevant report "Current migration situation in the EU: Torture, trauma and its possible impact on drug use", FRA, February 2017 <http://fra.europa.eu/en/publication/2017/february-monthly-migration-focus-torture>

¹⁰⁷ <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/>

¹⁰⁸ 801 people returned from Greece with the EU-Turkey readmission procedure in 2016 https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_eu-turkey_en.pdf

¹⁰⁹ With Council Decision (EU) 2016/1754 of 29.9.2016, Member States were allowed to implement their commitments under decision (EU) 2015/1601 as regards the 54,000 places with selection of the resettlement of Syrian applicants for international protection from Turkey instead of the relocation of applicants from Italy or Greece.

¹¹⁰ Up to 5.12.2016 in Belgium, Finland, France, Germany, Italy, Luxembourg, Netherlands and Sweden.

¹¹¹ https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20161208-4th_report_on_the_progress_made_in_the_implementation_of_the_eu-turkey_statement_en_0.pdf

It could be observed that this number is actually more than three times higher than the number of 801 persons that returned to Turkey in 2016. Of course, it falls far behind the total number of 54,000 places and continues to be lower than the number of pending applications, according to the statistics of the same Commission report.

¹¹² Up to 20.12.2016, according to the internal Communication of the European Commission "on the migration crisis".

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As regards the applications for relocation of the asylum seekers from Greece,¹¹³ the information for 2016¹¹⁴ show a significant deviation (3:2) among applications submitted in Greece (20,827) and places opened by the Member States (13,384). Also, a significant number (approximately 3000) of the 12,929 applications sent by Greece were not accepted by the Member States.¹¹⁵

The Asylum Service announces that only 5% of the applications that are submitted are answered within the stipulated 10-day period by the Member States, which in practice can reach up to 40 days, and after that the average waiting time from acceptance until its implementation is 58 days. The competent service then notes: These delays result in the slow decongestion of the accommodation facilities on mainland Greece, the diffuse disappointment among asylum seekers, and finally, the loss of the credibility of the relocation program.¹¹⁶ Especially as regards unaccompanied minors, the low number of acceptances of applications for relocation,¹¹⁷ in combination with the inadequacy of the country in suitable accommodation facilities, led to the public call by the European Network of Ombudspersons for Children (ENOC), addressed inter alia to the Presidents of the European Council, the European Commission and the European Parliament, asking for additional measures for the immediate relocation of a large number of unaccompanied minors to countries of Europe.¹¹⁸

The Ombudsman observes that the delays and the procedural obstacles in the realisation of the above commitments, but also the small number of countries that accepted in 2016 the relocation of people who asked for international protection in Greece as the first country of entry into the EU, constitute indications of the substantial refusal of certain Member States to comply with the program for the distribution of asylum seekers in the EU, as well as the inability of the EU institutional structure to ensure implementation of

the commitments under the relocation scheme.

5. Returns and issues of transparency in procedures

The Ombudsman has special competence¹¹⁹ for controlling all stages of the procedure of forced return to the countries of origin of third-country nationals, who are often detained, from the issue of the decision of their return until its implementation with land, sea or air transport to their country. Based on a sample check in pre-removal detention centers and third-country national return operations of the Hellenic Police, the Greek Ombudsman in the Annual Report it publishes especially for Returns, highlights the problematic points of the procedure in relation to the mandates of EU or domestic law and recommends organisational or other measures for assuring the rights of the people involved in the forced return procedure. **External monitoring by an independent authority and the transparency of police operations constitute the necessary guarantee of the rule of law vis-à-vis the risks for fundamental rights posed by any procedure that restricts personal liberty.** For this reason, external monitoring and the relevant Guidelines of the European Council, the CJEU case law, etc., constitute an integral part of the Return Handbook of the European Commission (2015) and the FRONTEX Code of Conduct (2014), as well as the new European Regulation 2016/1624 on the conversion of FRONTEX into a European Border and Coast Guard. This Regulation was adopted in September and provides for a European pool of forced-return monitors from the Member States (Article 29), which would ensure that no European return operation is conducted without external monitoring (Article 28).

5.1. Common problems of forced returns

In late 2014,¹²⁰ the Greek Ombudsman considered that the main problem was the extended detention in poor living conditions, beyond the maximum limit of the Return Directive and the subsequent overcrowding of Pre-removal Centers and police stations. Also, the deficient first reception services that resulted in detention in Pre-removal Centers often of vulnerable persons, such as minors. In June 2015, the

¹¹³ Who had entered before 20.3.2016.

¹¹⁴ Up to 20.12.2017, *ibid.* 13,384 places (pledges) by Member States, 20,827 applications were submitted in Greece, 12,929 applications were sent by Greece, 10,061 were accepted, 7,062 were implemented by Greece (141 unaccompanied, source IOM) and 121 were scheduled between 23.12 – 15.1.

¹¹⁵ See also statistics up to March 2017 <http://asylo.gov.gr/wp-content/uploads/2017/03/Relocation-procedures-up-to-19-03-17-gr.pdf>

¹¹⁶ <http://asylo.gov.gr/wp-content/uploads/2017/02/DT-Proodou-Metegkatastasis-.pdf>

¹¹⁷ Verbatim Press Release of Asylum Service, November 2016 <http://asylo.gov.gr/wp-content/uploads/2016>

¹¹⁸ See in this regard <http://enoc.eu/wp-content/uploads/2016/04/ENOC-Letter-5-April-2016-Sofia.pdf>

¹¹⁹ Directive 2008/115/EC, Article 8(6) of Law 3907/2011, Article 23 (6) and a Joint Ministerial Decision for the organisation of an external monitoring system (Government Gazette B 2870/24.10.2014). Regarding the Ombudsman's competence, see the relevant legal framework in the Annual report of 2016, Returns section, pg. 134.

¹²⁰ Annual Report 2014, pg. 151 et seq.

Hellenic Police's obligation was activated for the provision of statistics on the execution of returns and informing the Ombudsman on the scheduling of the relevant removal operations by the country's police divisions. The Ombudsman considers that already the regular submission of data from across the country to the independent authority, and the publication of statistics by the Hellenic Police on issues pertaining to the irregular migrants (arrests, deportations, etc.) on its website, are important steps towards the transparency of the administrative actions.

The data submitted however showed that 7 out of 10 returning individuals in 2015 were Albanian citizens, and that year the Ombudsman scheduled sample checks of removal operations by land presenting characteristics of a group deportation to Albania. Individual recommendations (e.g. supply of first aid kits) were accepted by the Hellenic Police, however others are still pending because they require the restructuring of detainee transfers by land. A major problem is that the police transfer vans that are used are configured as cells, which are particularly narrow, dark, with seats that are unsuitable for long travelling (e.g. from Athens to the Albanian borders or to Evros). The Ombudsman's recommendation is that the use of tourist buses should be evaluated from an operational aspect, in order to conduct the return operation by land in a vehicle that is appropriate for long travelling.

The Greek Ombudsman notes the State's administrative failure to complete the charter flight tender, and to generally finance the forced returns system since 1.7.2015, by the now unified Asylum, Migration and Integration Fund (AMIF) for the object of returns, based on the national program that was approved in the summer of 2015 by the European Commission.¹²¹ Regulatory changes were made for the management of the programme¹²² and there were subsequent administrative delays up to 2016.¹²³ In practice, the Hellenic Police, due to the failure to conduct

charter flights for returns by air, participates in Joint European Operations by air organised by the Member States and coordinated by FRONTEX.

Since December 2015 when the Ombudsman started participating in Joint European Operations and throughout 2016,¹²⁴ the issues that emerge do not change:

As regards pre-removal procedures, immediate measures are required, for a) the timely provision of information to the third-country nationals regarding the removal operation and its separate elements; b) their convenient and timely access to telephone communication means in order to be able to notify their family, and c) the coordinated, timely and complete provision of suitable meals and water.

The Ombudsman requests that the foreigners to be returned are not restrained with handcuffs or other means, unless this is necessary and adequate, and with special justification. It also requests that measures be taken to protect the dignity of the third-country nationals to be returned, and specifically from photographing etc., by journalists, especially in public areas, and in any case without their prior express consent.

The most important issue of the above, which is a constant operational need in every forced removal operation, as explained below, is that the third-country nationals are literally informed at the last minute that they will be returning (before they enter the aeroplane or the boat or after they reach their destination in certain cases of land transfer).

5.2. The pressure to accelerate readmissions The explosion of mixed flows in 2015, and the difficulties in the implementation of the European Commission action plan for the reception and relocation of asylum seekers in principle, and also for the implementation of an effective forced returns system for the other populations, also mark the developments in the management of the returns in 2016. The adoption of the EU-Turkey Statement of 18 March was accompanied by the activation of the procedure for the readmission into Turkey of third-country nationals who irregularly entered Greece from the sea borders. This is an exceptional procedure, based on Article 2 of the Directive, where the basic guarantees of the fundamental rights are

¹²¹ Decision C(2015) 5313 of 31.07.2015

¹²² The establishment of the Ministry of Interior and Administrative Reconstruction, with PD 24/2015, followed six months later, the establishment of a competent authority at the Ministry of Interior and the appointment of executive authorities for the management of AMIF with Article 9(6) et seq. of Law 4332/2015, and after that, under its authorisation, various ensuing regulatory acts. Legislative amendments followed with Law 4375/2016, Article 76 et seq. and Law 4403/2016, Article 65(1).

¹²³ Call for proposals by the Managing Authority (European and Development Programs Division/Ministry of Interior - Citizen Protection Sector) http://www.minocp.gov.gr/index.php?option=ozo_content&perform=view&id=5697&Itemid=533&lang=GR for forced returns of the Hellenic Police 3-2-2016, and for the external monitoring of returns 21.10.2016.

¹²⁴ In 2016, the Ombudsman was present in 11 Joint Operations for the Return by air of foreign nationals to Pakistan and Georgia, coordinated by FRONTEX. This number constitutes 55% of the operations in which the Hellenic Police participated or which it organised that year.

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however applied.¹²⁵

Members of the Greek Ombudsman participated as monitors in 12 readmissions to Turkey (45% of the operations by sea or air from the Aegean islands that the Ombudsman was informed of), after the EU-Turkey Statement, and in particular from 18.5.2016 onwards.

Readmissions present two aspects that are common in all forced removal operations:

- The failure to inform the Syrians or citizens of other countries in a timely fashion, that they are about to be included in an operation of readmission into Turkey, and
- The lack of judgement on a case-by-case basis, regarding the necessity of handcuffing and the review of the means of restraint used during the operation.

They also present certain new problems:

- Questioning of the need to have a fit to travel medical certificate.
- Incomplete case file accompanying the detainees regarding the necessary evidence that they were informed in a language they understand also regarding the progress of any application for international protection (rejection at the second degree, serving of documents etc.), and
- Questioning of the obligation of participation of the Ombudsman's representative as monitor in all the briefing and debriefing meetings of the removal operation, which is imposed however by the Returns Handbook of the European Commission (2105) and the Code of Conduct (2015) and the new Regulation of FRONTEX (2016).

The Ombudsman notes that the questioning of substantial guarantees (health state for which the health card from the hotspots could be used, if of course it is filled in) or procedural ones (the presence of an external monitor at each stage) is not random. It is indicative of the pressure for fast and summary procedures, due to the small number of those readmitted to Turkey after the Joint Statement (according to data of the European Commission, 810 people in total in 2016).¹²⁶

¹²⁵ Directive 2008/115/EC, Article 4(4).

¹²⁶ [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_eu-](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_eu-turkey_en.pdf)

An incomplete file is an even more worrying symptom because it might conceal a disregard of the fundamental right for examination of a request for international protection at a time when the Asylum Service and Appeals Authority are called upon to accelerate their procedures because the number of individuals candidate for readmission or return depends on the speed of examination of any asylum requests at the first and second degree.

It must be noted that the Greek Ombudsman examined a report (case 220930/2016) of a five-member family of Syrian citizens who found themselves on 21.10.2016 prisoners in Adana, after their readmission from Kos by air, whereas the operation initially had as sole starting point the island of Lesbos. The Authority launched an investigation seeking evidence on the written or other information provided to the Syrians about their right to international protection, in a language they understood, as well as the fact that apparently their intention to lodge an asylum application had not been recorded (in the relevant database and the list accompanying the external monitoring of the readmission operation) at the hotspot of Leros.

The UNHCR has also investigated this matter, and it informed the Ombudsman about a case where a large group of third-country citizens who were found at sea outside of Messinia in Peloponnese and were detained for readmission did not have access to information about international protection from refoulement. Following the report of their attorney, the Ombudsman is investigating the case of 6 Iraqi women from this group, who were held in Messinia for readmission even though they had allegedly declared their intention to lodge an asylum application. The Ombudsman requested that their imminent readmission was suspended until the issues of their access to the asylum procedure and family reunification with the male members of their family were fully answered, receiving a positive response of the Hellenic Police regarding the suspension of their initially scheduled readmission (case No. 220665/2016).

The Administration's internal investigation regarding both the above cases does not appear to have been completed to date, and the Ombudsman has asked for a specific time frame and to be informed about the results.

In general, in order to assure the completeness of the

external monitoring, the Ombudsman addressed a letter in October to the leadership of the competent Ministry of Migration Policy and Ministry of Interior - Sector of Citizen Protection, inviting their services to a discussion. The purpose was for the independent authority to have full and timely information about all stages of the returns/readmissions procedure, in order to be able to form a comprehensive picture of the practices connected to the rights of information, family unity, protection from return, etc., especially at the pre-removal stage. This invitation met with the positive response of the Hellenic Police, but not the First Reception Service of the Ministry of Migration Policy.

The Greek Ombudsman, in the context of its special mandate for the external monitoring of the returns, will continue to cooperate with all competent agencies, in order to achieve the greatest possible transparency in all administrative actions.

B. Infrastructure -
Facilities - Living
conditions



B. Infrastructure - Facilities - Living conditions

In a state governed by the rule of law, the stay of refugees and migrants needs to be under conditions of respect of the human rights of this population. Even those who are simply passing through the country, whose status is not regulated, are still constitutionally covered with the *complete protection of their life, honour and freedom* (Article 5(2) of the Constitution) *whereas respect and protection of the value of the human being constitute the primary obligations of the State* (Article 2 (1) of the Constitution). This Chapter examines the issues of housing, food and health, as the most important social services closely linked with the protection of life and human dignity.

1. Difficulties in meeting housing needs

1.1. Housing conditions in sites accommodating large numbers of refugees and migrants

Adequate housing conditions in safe spaces with suitable infrastructures were still an issue until the end of 2016 for most sites accommodating large numbers of refugees and migrants, across the Greek territory. This finding per-

tains, with great deviations however regarding the intensity of the problem between the various sites, to both temporary accommodation facilities on the mainland, and the hotspots on the islands of the Eastern Aegean.

The State up to now has failed in its obligation to ensure a decent level of living conditions for all asylum seekers, as such arises from both the European¹²⁷ and the domestic law.¹²⁸ The particularly adverse conditions prevailing in group refugee and migrant accommodation centers feed into the allegations on violation of their human rights, and in certain cases, even on their inhuman and degrading treatment.

According to information of the Central Coordinating Body for Migration of the General Secretariat for Information,¹²⁹ on 3.1.2017 there were around 22,000 people living in

the approximately 40 temporary accommodation sites on the mainland and approximately 15,000 people in the 5 hotspots of the islands.¹³⁰ Considering that this is a small number of people, compared to the hundreds of thousands that crossed through Greece without the legal formalities in the past two years, which in fact remained steady the last months of 2016, the inability of the machinery of the state to handle it, is of particular concern. **The lack of any central planning and coordination of the involved agencies and services, as well as the laxity in implementing the relevant provisions for addressing the situation, in combination with the failure to promptly and appropriately utilise European and domestic resources, are among the key reasons why the problem is created and persists.**

The data collected by the Ombudsman come from on-site inspections and visits of its experts over the past two years, from the competent state services, from reports of national and international organisations, the Council of Europe and from the media.

Critical problems are accommodation in tents or other inappropriate structures for long periods of time, the inadequate sanitary conditions and the lack of the appropriate infrastructure for meeting daily needs.

Below follows an attempt of a summary and, to the extent possible, comprehensive record of the main problems found in the mass accommodation facilities for refugees and migrants in Greece,¹³¹ with the note that there are positive exceptions of accommodation facilities that are operating in a satisfactory manner and meet the standards of decent living conditions.¹³² At this point, it should be noted that the situation prevailing in each accommodation site has proven particularly fluid, in the sense that it keeps changing due to various factors. This change is frequently positive and pertains to the improvement of the housing conditions with the replacement of the makeshift structures by containers or other more appropriate structures for meeting the shortages in basic amenities,¹³³ even the evacuation of particularly inappropriate sites and the housing of those living there in

¹²⁷ Directive 2013/33/EC, Articles 17, 18, 28 and 31.

¹²⁸ Law 4375/2016, Articles 1, 8 and 10, and PD 220/2007, Articles 12 and 13.

¹²⁹ These data deviate from those published by UNHCR and other agencies. With regard to this issue, see Chapter A1.

¹³⁰ According to the same source, approximately 18,500 people (mainly vulnerable groups, for relocation and family reunification) are living in apartments or hotels on mainland Greece and the islands through the housing programme of the UNHCR in cooperation with the Municipalities and NGOs. As a rule, the conditions in this housing category are satisfactory.

¹³¹ This pertains to the last months of 2016 and January of 2017.

¹³² Elaionas in Attica, Thermopyles, Kara Tepe in Lesbos, etc.

¹³³ e.g. Malakasa, Ritsona in Viotia, Lagkadikia.

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other accommodation facilities.¹³⁴ There are however cases where negative developments have been observed, with a rapid deterioration of the living conditions, especially when they were at a marginal level, as happened during the winter of 2016-2017 due to the harsh weather conditions.¹³⁵

In many accommodation facilities, at the end of 2016, tents were mostly being used,¹³⁶ several of which were intended only for temporary camping, whereas in other facilities the population was distributed in prefabricated containers, military type group tents or ordinary tents.¹³⁷ It is self-evident that the crowding of large numbers in tents for long periods creates insurmountable problems in their daily life, since it is impossible to meet even their basic needs, while there are risks for their health and safety. Especially during bad weather conditions, the inappropriate shelters, in combination with the lack of heating, render the stay in these sites impossible. It is indicative that in January 2017, in the framework of a delayed, and finally failed attempt by the State to address the cold, even a Hellenic Navy ship was used at the port of Mytilini as a shelter for people from Moria.

In camps where there are prefabricated containers or specially configured containers, their suitability is not always ensured, while any damages are not repaired (e.g. camps of the Ministry of Rural Development in Lavrio and Accommodation Facility in Lavrio).

Frequently not even the essentials are available, such as drinking water, hot water, heating, adequate electricity, bed covers (e.g. Chios (VIAL), Polykastro in Kilkis).

The inadequacy of many facilities in basic infrastructures is a direct risk for the health of the residents. Where common restroom and personal hygiene spaces are used, they are usually not enough of them, they are not maintained correctly and they are not diligently cleaned (e.g. Chios (VIAL), Lagkadikia).

In many facilities there are either inadequate or not at all food preparation spaces, resulting in the people cooking outside their tents in makeshift kitchens. In such a case, on 24.11.2016, two people died and two more were injured

from the explosion of a gas bottle. Also, there are frequently no infrastructures for the operation of dining, religious worship, gathering - entertainment and children occupation spaces (e.g. Lagkadikia, Kalohori in Thessaloniki).

A special category are the old industrial or other purpose buildings, where rooms have been arranged (Oinofyta in Viotia, Elefsina - Merchant Maritime Academy, Veria - Military Camp "Armatolou Kokkinou", Sindos, Kalohori in Thessaloniki) or tents have been installed (Kordelio in Thessaloniki - Softex). The use of the former factories poses serious dangers to the health of the residents, because they are crowded in closed spaces, without sufficient ventilation, drinking water or cleanliness. In some of these sites in fact there are strong indications of the existence of hazardous industrial residues, while the proximity to large mosquito reproduction sites renders these areas unsuitable for accommodation from a health aspect (Rice fields in Thessaloniki, the estuary bed of Gallikos River, Kalohori lagoon). The Hellenic Center for Disease Control & Prevention issued an opinion on 21.7.2016, asking for the immediate closing of such unsuitable sites for public health reasons.

Finally, the spatial planning of these facilities is frequently problematic. The operation of accommodation sites in remote areas without adequate public transportation coverage (e.g. Elefsina, Skaramangas, camps of the Ministry of Rural Development in Lavrio, Sindos) or close to high-speed motorways (e.g. Malakasa, Oinofyta), creates practical difficulties as well as safety issues for the residents. In most sites there are issues related to the security and guarding of the facilities (see also Chapter C3).

1.2. Background and interventions of the Greek Ombudsman The lack of any vigilance by the Greek State for addressing these mass mixed flows, despite the obvious signs already in late 2014 on their rapid increase, led to a great extent to a failure in ensuring essential reception and accommodation conditions for the people coming into the country. The Greek Ombudsman had asked in December 2014 the Greek Administration to design and promptly implement an operational action plan for the provision of critical means for the survival of the Syrian citizens who were fleeing to Greece.¹³⁸

¹³⁴ e.g. Herso in Kilkis, Petra in Olympos, Katsikas in Ioannina.

¹³⁵ Souda in Chios, Moria in Lesbos, Malakasa, etc.

¹³⁶ Samos, Koutsohero in Larissa, Aspri Ammos - Halkero in Kavala, Malakasa, Ritsona in Viotia.

¹³⁷ Souda in Chios, Moria in Lesbos.

¹³⁸ <http://www.synigoros.gr/?i=human-rights.el.files.247022>

In the beginning of 2015, the unprecedented flow of migrants and refugees found the country completely unprepared. There was no plan for meeting the essential needs of the new arrivals, who would stay in temporary makeshift shelters on the islands of their arrival and then on the mainland, waiting to cross the borders. The First Reception Centers (FRCs) provided for by Law 3907/2011 were not operating, even those that had already been constructed (Lesvos), nor were there appropriate accommodation facilities for asylum seekers. The only organised facility was that in Fylakio, Evros, which was in operation since 2013 and was intended for a short stay of a few days. The complete absence of the State in securing the accommodation and the basic needs of an exceptionally large number of foreigners was noted in Eidomeni, where the refugee camp was operating without state participation or coordination.

With an intervention in July 2015, and following on-site inspections carried out at the critical islands, the Greek Ombudsman asked, *inter alia*, for an emergency plan for the management of the crisis for each island separately, with the involvement of the local government and local services, the immediate operation of the FRCs with the procedures and specifications provided for by law and the seamless and continuous coverage of the living expenses of the third-country nationals arriving at the islands. At the same time, it asked for the issue of the Joint Ministerial Decisions provided for by Law 4332/2015 for the management of the relevant European programmes and the allocation of funds to the involved local and regional authorities (LRAs) for meeting the urgent and emergency first reception needs.¹³⁹ Finally, with regard to the camp in Eidomeni, the Ombudsman stressed the need for its coordination by the State and asked for vigilance for the implementation of an operational plan in the event limitations were put on border crossings.¹⁴⁰

During 2015, there were efforts to set up and start operating FRCs in Lesvos, Chios, Samos, Kos and Leros, at the responsibility of the Ministry of the Interior, as well as informal sites, which were managed by NGOs and other civil society organisations (Piraeus Port). At the same time, there was a Temporary Accommodation Facility operating on mainland Greece for unaccompanied minors in Thessaloniki, whereas in September 2015 the first organised accommodation facility in Elaionas, Attica, started operating after the

Municipality of Athens handed over a plot of land. In the fall of 2015 accommodation facilities were established on old military camps granted by the Ministry of National Defence, and on industrial properties, granted by the State or private individuals.

The gradual closing of the Balkan borders, from November 2015 to February 2016, when they finally closed, resulted in the dramatic deterioration of the living conditions in the temporary accommodation sites, since approximately 60,000 refugees and migrants were essentially trapped on the mainland. This development led to the necessary change of stance of the Greek Administration towards the problem of the management of the arriving refugees and migrants. Whereas up to that moment Greece's role as a country where populations crossed over from Turkey having as their final destination other European countries, served as an excuse for the lack of an integrated reception and accommodation system, *the fact of the inevitable stay of the refugees and migrants in the country for an indefinite period of time obliged the official state to accept the responsibility of the organisation and implementation of an effective system that meets the required standards. This goal however has not been achieved to date, despite the consecutive announcements of the agencies involved.*

After the evacuation of the unofficial camp of Eidomeni (May 2016), most foreigners were transferred to informal accommodation sites of Northern Greece,¹⁴¹ some of which remained unsuitable for their long-term accommodation up to the end of the year. At the same time, new arrivals were being transferred from the islands to the mainland. The Greek Ombudsman visited various temporary accommodation sites on the mainland in 2016, which were intended for irregular arrivals to Greece before 20.3.2016, and ascertained their inadequacy.

After the EU-Turkey Statement of 18 March 2016, the new arrivals were essentially being detained in the reception and temporary accommodation facilities of the hotspots in Lesvos, Chios, Samos, Kos and Leros for long periods of time, until the procedures for the lodging and examination of the asylum applications or their readmission to Turkey were processed. These facilities did not ensure the living of the refugees and migrants under dignified conditions, due both to

¹³⁹ <http://www.synigoros.gr/?i=human-rights.el.danews.296571>

¹⁴⁰ <http://www.synigoros.gr/?i=kdet.el.news.327690>

¹⁴¹ See relevant UNHCR announcement dated 27.5.2016: <http://www.unhcr.gr/nea/artikel/ad8d5e283f94ac1e6860773eb8bb3920/i-ya-anisychei-gia-t-1.html>

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the shortages in basic infrastructure and essential amenities, as well as their limited capacity. It is typical that, according to the data of the Central Coordinating Body of the General Secretariat for Information, on 3.1.2017, there were 5542 third-country nationals living at the Lesbos hotspot, which has a capacity for 3500, whereas in the Samos hotspot, with a capacity for 850, there were 1932 people recorded.

The lack of the essential living standards and infrastructure had tragic consequences, especially during the 2016-2017 winter, when the absence of organisation and coordination of the competent agencies for the protection and safety of the populations on the islands and the mainland was manifested in the most dramatic manner. An indicative example is the camp of Moria (Lesbos), where up to the end of January 2017, the Ministry of Migration Policy had not managed to communicate and cooperate with the local Municipality and the humanitarian organisations for the protection of the residents from the cold. However, after the death of three individuals, which, according to reports, was caused by the fumes of makeshift heaters, suitable heated tents were procured, places for vulnerable groups in the municipal site of Kara Tepe were found, and people were hosted on a Hellenic Navy ship in the port of Mytilini. The solution to the problem, albeit temporary, in such an impressive short time from the tragic incident, proves that there is a way to address the problems, the necessary actions however were not taken in time.

1.3. Legal framework - Causes Law 4375/2016 attempted, inter alia, to establish a rational and operational system for the management of mass accommodation sites, laying the foundation for the effective cooperation of the involved services and agencies, by assigning distinct competences to them. However, nearly a year after the entry into effect of the new legislative framework, we saw a piecemeal approach to the implementation of the provisions pertaining to Temporary Accommodation and Temporary Reception Facilities, **the majority of which were still operating unofficially until the beginning of 2017, and without meeting the formal and substantial requirements of the applicable laws.**

Issue of normative acts In particular, the issue of the normative acts required for the establishment and operation of the existing facilities, which started their operation under the pre-existing legislative framework (Law 3907/2011, PD 220/2007) and

without the procedures provided for, is still pending. Beyond the legal issues raised by the informal operation of these structures, this pending issue is the main reason for organisational malfunctions, due to the lack of effective coordination of the agencies involved and the inability to monitor and attribute liability in cases where serious omissions of actions prescribed by law are discovered.

According to the enabling provision of Article 10(4) and (5) of Law 4375/2016 the open Facilities for the Temporary Accommodation of Applicants for International Protection and the open Temporary Accommodation Facilities for third country nationals or stateless persons who arrive or are staying in the country without the legal formalities are established by a joint decision of the Minister of Finance and the Minister for Migration Policy. Up to the end of 2016, the only relevant JMDs that had been issued pertained to the Temporary Reception Facilities in Leros (for a period of operation up to 31.12.2016) and in Schisto, Attica and Diavata, Thessaloniki, respectively.¹⁴²

Moreover, for the needs of the establishment of open Temporary Reception and Accommodation Facilities, there is provision for the granting of private and public properties, fields and military camps, on an exceptional basis. The construction, installation and operation of facilities at such sites takes place in deviation of the existing land uses, but is governed by special specifications, restrictions in their construction and environmental terms, for the approval of which relevant JMDs are required (Article 16(3) to (5) of Law 4375/2016). Despite the fact that during the past two years, a large number of such properties has been granted, which are in operation, no relevant normative act has been issued, resulting in inappropriate and dangerous sites, from a health and environmental aspect, being used.

Rules of Operation According to Article 17 of Law 4375/2016, it is necessary to introduce General Rules for the Operation of Temporary Accommodation Facilities and Temporary Reception Facilities, with the issue of a relevant Joint Ministerial Decision, whereas their operation is governed by Internal Rules, issued at the responsibility of the Director of the Reception and Identification Service, with the consent of the Heads of the Temporary Accommodation Facilities or the competent Reception Directorate

¹⁴² JMD 4Δ/8484/13-7-2016 (Government Gazette B 2177/13-7-2016) and JMD 3/14762/16-11-2016 (Government Gazette B 3720/16-11-2016), respectively.

of the General Secretariat for Reception of the Ministry of Migration Policy, respectively. There are however facilities still operating based on the General Rules of Operation¹⁴³ established pursuant to Article 8A of Law 3907/2011, which was repealed with Law 4375/2016, whereas in most cases there are no Internal Rules.

General Secretariat for Reception

According to Law 4375/2016, competent for the establishment, operation and supervision of open Temporary Reception and Temporary Accommodation Facilities are the Reception and Identification Service (Article 8(2)(b) and (d)) and the Accommodation Department of the Reception Directorate (Article 27(2)) that are under the General Secretariat for Reception of the Ministry of Migration Policy (Article 26). The Reception Directorate is also responsible, inter alia, for: a) the coordination of the Reception actions across the country; b) the study, drafting and monitoring of the implementation of the policy for meeting the accommodation needs of international protection applicants and unaccompanied minors; c) the cooperation with co-competent ministries, the Directorate General of Home Affairs of the European Commission, the UNHCR, civil society organisations and other competent agencies in each case, for the planning and implementation of the above policy; d) the study, development and processing of the institution framework of specifications related to the establishment and operation of the reception centres and accommodation facilities for applications for international protection and unaccompanied minors, and e) the care for the communication and cooperation with the involved public agencies and services of the State, with Independent Authorities, International Organisations, NGOs, other organisations of the civil society and legal entities, with the purpose of managing the humanitarian aid (Article 27(2)).

In practice, the management and coordination of the actions for the transport, accommodation, food and health care of the refugees and migrants is carried out by the Central Coordinating Body for the Management of the Refugee Crisis that reports directly to the Chief of the Hellenic National Defence General Staff, in cooperation with the Asylum Service and the Reception and Identification Service.¹⁴⁴ At the same time there are facilities, where responsible for the management of specific issues are simultaneously the Ministry of Migra-

tion Policy, the Ministry of Defence, the local Municipality and humanitarian organisations (e.g. Chios (VIAL), Ritsona and Oinofyta in Viotia, Polykastro in Kilkis). **This fact creates an overlap of competences and removes the possibility of comprehensive supervision and effective coordination by the main agency that has been appointed for this purpose.**

The management of the facilities

According to the above, the Ministry of Migration Policy is responsible for the overall supervision and operation of the facilities. The structures operate at sector level, the management of which is assigned to a head of sector. The appointment of the head follows specific procedures (article 11(5) of Law 4375/2016). Each sector is structured into distinctive operating levels, as follows: a) logistics level, which is competent for the administrative support, housing and nourishment of the residents and cleaning of the spaces; b) medical care and psychosocial support level; c) information provision level which is responsible for the provision of information to the residents regarding their rights and obligations and d) level of external guarding and security (Article 13(4)).

The management of a large number of structures has been assigned to IOM, the UNHCR or to NGOs and they operate without any substantial supervision by the ministry and without the required structure. As a result, in many cases we witness a lack of a direct view of the situation and the needs of these facilities by the competent General Secretariat. Difficulties arise therefore in addressing these issues as well as a vagueness regarding the responsibilities that correspond to each agency (e.g. settlement at the former airport of Elliniko, Ritsona in Viotia, camps of the Ministry of Rural Development in Lavrio).

A special case is the camp in Moria, Lesbos, since its operating framework is particularly unclear. The camp is laid out surrounding the fenced area of the RIC and is guarded by the Police. However, formally, the director of the RIC is not responsible for the operation of the other facilities, which operate informally.

Finally, we must mention that there are sites the responsibility of which is assumed by no state or other agency. A typical example was up to May 2016, the camp in Eidomeni, and to a much smaller scale, the site in Neraki, Lavrio, with approximately 100 people.

¹⁴³ MD 11.1/6343/2014.

¹⁴⁴ Law 4368/2016, Article 96(1) and JMD Φ. 000/8/245258/Σ. 37/2016 (Government Gazette B 630/9-3-2016).

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Financing

During the past two years, the country has not managed to use all the available, mainly European, funds. **Indicative-**

ly, in 2015 there was zero use of the scheduled financing of the Asylum, Migration and Integration Fund (AMIF), which includes actions for the improvement of the living conditions, while in 2016 only 2% of the assigned funds were used.¹⁴⁵

This is due, among other things, to the financing gap created from July 2015 up to part of 2016, when the establishment of the Service for the management of the European Asylum - Reception and Integration Programmes of the Ministry of Interior (Article 9(6) et seq. of Law 4332/2015) was followed by a series of delays in the issue of the necessary regulatory acts and the procedures for the staffing and certification of the unified managing authority.

Law 4375/2016 transferred the competence for the management of the programmes from the Ministry of Interior to the Ministry of Economy, Development and Tourism (April 2016), a fact that caused new delays.

Aiming at the effective coordination, supervision and acceleration of the actions of the Ministry of Economy and the involved agencies for the use of the emergency support funds, intended for the management of the migration flows, a Special Secretariat was instituted for the Coordination and Management of the programmes of AMIF and the Internal Security Fund (ISF) and other funds at the Ministry of Economy (Articles 75 and 76 of Law 4375/2016). Moreover, the Department for the Implementation of Reception Programmes of the Directorate of Reception of the Ministry of Migration Policy is responsible, among other things, for ensuring the cohesion and complementarity between the co-financing contributions of the national and EU programmes, and those covered by other national, EU and private financing means (Article 27(2d) of Law 4375/2016). By force of Ministerial Decision No. 100746-29/09/2016/16 (Government Gazette B 3266/11-10-2016), a committee was set up for monitoring the National Programme of the Asylum, Migration and Integration Fund and the National Programme of the Internal Security Fund for the 2014-2010 period. Finally, under Article 65(1) of Law 4403/2016, part of the competence for drawing up and submitting the payment requests was assigned to the Special Service

“Certification and Verification Authority of the Co-financed Programmes” of the General Secretariat for Public Investments and NSRF.

The existence of multiple involved agencies appears to hinder instead of accelerate the procedures for the use of the EU funding.

The use of the funds from the emergency financing of the European Union (DG Home) appears to be better. In total, 178 million euros have been approved for the involved ministries and an equivalent amount for the UNHCR, the International Organization for Migration and the European Asylum Support Office (EASO).

Finally, the European Commission, in the context of the Emergency Support Instrument (DG ECHO), also dedicated emergency funds to the humanitarian organisations operating in the country for meeting the basic living needs of the refugees (the amount of 198 million euro has been announced in total). As agreed between the competent Commissioner for Humanitarian Aid and Crisis Management and the Greek Alternate Minister for Migration Policy at the time, a priority of the additional financing is *the improvement of existing shelters and construction of new ones in the camp facilities ahead of the upcoming winter. At the same time improvement of sanitation conditions and provision of other infrastructure such as heating.*¹⁴⁶

However, judging from the considerable difficulties encountered by a large number of people residing in a number of sites across Greece in the winter of 2016-2017, this target was not met in all the cases, a fact that appears to be due to the lack of effective cooperation between the competent agencies (in more detail, see Chapter E1.2.).

The roles of the local and regional authorities (LRAs)

According to Article 19 of Law 4375/2016: *Legal entities governed by Public Law, local and regional authorities (LRAs) of the 1st and 2nd degree, within whose administrative boundaries operate the First Reception Centers (FRCs), Reception and Identification Centers (RICs) and Open Facilities for the Temporary Reception and Accommodation of refugees and migrants or have spaces for meeting emergency housing and temporary accommodation needs for refugees and migrants,*

¹⁴⁵ Annual Report of the National Programme of the Asylum, Migration and Integration Fund 2016, Table 3.

¹⁴⁶ See relevant Press Release of the European Commission on 10.9.2016.

and agencies of these LRAs, may, in order to address emergency and urgent needs, in deviation of any provision to the contrary, take all the necessary steps and enter into project, service, procurement or movable and immovable property lease contracts with third parties with regard to the reception and accommodation of newly arriving third-country citizens exclusively for meeting temporary accommodation needs, the operation of the above facilities, the transportation from the points of arrival or temporary accommodation towards or from the temporary or permanent accommodation facilities, which are within or outside their geographical boundaries, the nourishment, prompt medical care, burial expenses, humanitarian aid and management of any offer in money or in kind, the management, transportation, storage and distribution thereof, as well as any other expense that is absolutely necessary for serving the above purposes. Also, in article 18(1) and (2) of the same law, there is provision for the financial support of the Decentralised Administrations, Legal entities governed by Public Law and local and regional authorities (LRAs) of the 1st and 2nd degree, for handling the emergencies created by the entry and reception of third-country citizens.

However, in practice the cooperation of the local authorities with the central administration proved to be, in broad terms, inadequate, since the parties involved initially appeared unwilling to assume their respective responsibilities, while showing mistrust towards the intentions of the other party. There are for instance municipalities which approved the removal of the newly arriving refugees and migrants from the boundaries of their administrative area as the solution to the problem of their management, while at the same time the state was dramatically delaying the measures necessary for taking the pressure off the local communities who were taking the brunt of the migration flows.

Indicative of the lack of coordination and cooperation of the central administration with the LRAs is the case of the recruitments by Municipalities, of employees used for the operating needs of the camps, through the community work programme of the Greek Manpower Employment Organisation (OAED). In many cases it appears that the recruitment of the employees was delayed, which meant that the accommodation facilities for which they were being recruited had already stopped operating or their needs had changed (e.g. Herso in Kilkis, Petra in Olympos, Katsikas in Ioannina).¹⁴⁷

However, even in facilities where this staff is employed, there are issues related to how the employees are utilised, because in practice the allocation of duties and the staff's management are not clear (e.g. Malakasa).

NGOs

The role of the NGOs and civil society organisations in the provision of humanitarian aid and the improvement of the living conditions in the accommodation sites proved to be invaluable. However, in this area as well, the lack of coordination and monitoring by the State, created problems that are related to the extent to which the offered aid was used, as well as its quality.

Law 4375/2016 (Article 11, par. 9) lays down strict terms, based on which competences are assigned to civil society agencies for the effective operation of the Facilities for Temporary Reception and Temporary Accommodation. The same Article provides for the issue of a relevant Joint Ministerial Decision, which is still pending. **The creation and keeping of a Registry of accredited agencies by the Directorate for Reception of the General Secretariat for Reception, one year after its establishment, is still pending.**

1.4. Solutions - Recommendations

The lack of satisfactory living conditions for the existing residents of the accommodation and reception centers is anticipated to get worse if there is an increase in new arrivals, especially through the sea borders of Greece. This fact, combined with the excessive delays in the processing of the international protection, relocation and voluntary or involuntary removal procedures for those migrants and refugees who came into Greece without the legal formalities in the past two years, renders these accommodation sites anything but temporary. For these reasons, the immediate measures which the State must take to assure satisfactory living conditions, should be based on the prospect of a potential long-term stay. In this context, the Greek Ombudsman recommends:

- That the inadequate sites cease their operation immediately.
- That the alternative accommodation programmes (in apartments, hotels, etc.) are extended to cover as many beneficiaries as possible, also aiming at their social inclusion.

¹⁴⁷ As emerges from publications and relevant complaints, see e.g. <http://www.kathimerini.gr/892051/article/epikairothta/ellada/oi-prosfyges-efygan-oi->

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- The official establishment of all the accommodation facilities and the issue of the stipulated Rules of Operation and Internal Regulations.
- Taking measures in order to ensure in a uniform manner, for all accommodation facilities, the essential commodities and services for all, namely appropriate shelter, food, drinking water, basic clothing items and medical care. Also, public transportation to the closest urban center.
- The better coordination of the services and agencies that operate in the accommodation facilities and the effective supervision of their operation by the General Secretariat for Reception.
- The acceleration of the procedures for the better use of the EU and national funds, intended for the accommodation of the refugees and migrants residing in the country. Also, the proper management of these funds for financing specific needs.
- The completion of the preparation of the Registry of accredited agencies by the Directorate of Reception of the General Secretariat for Reception and its proper use.

2. Catering issues

2.1. The situation on 31 December 2016

After several months of failing to meet the needs of the third-country nationals hosted at the hot-spots and facilities of the mainland,

the situation in the area of provision of food appears to have become clearer, at least as regards the procedural/organisational aspect. Alimentation to the approximately 60,000 people remaining in Greece having arrived from the shores of Turkey, is provided with the responsibility of the armed forces in the case of accommodation facilities and sites for which responsible is the Hellenic National Defence General Staff, by various organisations in the corresponding accommodation facilities, or by the immigrants' own means, if they can afford it. The key player however in the area of nourishment, since March 2016, have been the armed forces which appear to be supplying, through private catering services, meals to most of the third-country nationals who have arrived in the country during the crisis.

As arises from the regular detailed report which the Hellenic

National Defence General Staff publishes, the armed forces were providing in late December 2016 three meals a day to more than 25,000 people. The meals included breakfast, lunch and dinner, and varied depending on the population classification (general category, vulnerable groups, pregnant women, diabetics) and the age of the individuals (infants up to 6 months old, infants 6-12 months old, children 1-12 years old, adults); their content is described in detailed tables included in the tender notice sample, which the National Defence Ministry has drawn up and published.¹⁴⁸ Specifically, the meals do not include pork or alcohol, provide for beef and chicken once a week each, contain a total of approximately 2000 calories per person and are budgeted at 5.87 euros per person which is the fixed cost for nourishing detained people.

According to a press release of the Hellenic National Defence General Staff on 29 December 2016, 7,208¹⁴⁹ people staying in facilities on the 5 islands of the Eastern Aegean and 17,854¹⁵⁰ people staying in 34 accommodation facilities of the mainland were being provided with food (i.e. a total of 25,262 people nourished by the armed forces). Considering the difficulty in finding the true numbers of people hosted on any given day, as described in Chapter A1, and according to the numbers given daily to publicity by the coordinating body, the armed forces appear to provide for alimentation on a daily basis of a little less than half the people remaining in the country.

The meals are distributed at the location of the temporary accommodation of the third-country nationals, where the pre-packaged portions, fruit and bottles of water are transported and distributed to the beneficiaries, who form a queue at the scheduled times.

In the facilities and sites where the meals are not provided by the armed forces, there is no uniform method or procedure

¹⁴⁸ See for example the tender notice for the procurement of catering services of 30 May 2016, pg. 45 et seq. http://www.pkm.gov.gr/inst/pkm/gallery//PKM%20files/Regional%20News/2016_05_30_ΔΙΑΚΗΡΥΞΗ%20ΔΙΑΓΩΝΙΣΜΟΥ%20ΣΤΙΣ%20ΒΑΣΙΛΙΚΩΝ%20ΜΕ%20ΑΔΑ%20ΨΛ96-ΝΟΒ.pdf or the similar tender notice of 26 May 2016, as published on diavgeia website, at <https://diavgeia.gov.gr/doc/6XT06-PΣΨ?inline=true>

¹⁴⁹ The number of people staying in these facilities, as arises from the press release of the Hellenic National Defence General Staff of 30 December 2016, <http://www.geetha.mil.gr/media/pdf-arxeia/2016/greek/prosigiko/20161230.pdf> was 10,454. The corresponding number arising from the announcement of the Central Operational Migration Body for the same day was 10,778 - while the number of 9,943 is written, probably by mistake.

¹⁵⁰ Actually, according to the same announcement of the Hellenic National Defence General Staff, if someone adds the separate numbers in these facilities, it appears that 15,276 people were staying on that day. According to the announcement of the Central Operational Migration Body, it appears that a total of 22,300 people were staying in the facilities of mainland Greece.

for the distribution of the meals. Many organisations among those that have undertaken the provision of food, also choose to contract with catering services, while others appear, particularly lately, to prefer to prepare the meals on site in collective/community kitchens.¹⁵¹ At least in one facility under the control of the local government, in Kara Tepe in Lesvos, as the Ombudsman discovered during an inspection the distribution of pre-packaged food takes place, “door to door” to the shelters in order to avoid queues and protect the dignity of the individuals, as stated by the people responsible.

The trend for the immediate future, as the competent minister announced during an interview on 27 November 2016 given to the Athens News Agency, is to replace the catering services in all facilities with meal vouchers and community kitchens.¹⁵²

The criticism received for the current system focuses mainly on the quality of the food,¹⁵³ the occasional delays in the distribution of the meals, issues in recording the actual number of individuals, and occasional complaints among competitive catering services on the contract award procedure¹⁵⁴ which are reproduced by the local Press and are sometimes adopted by local stakeholders.¹⁵⁵

2.2. The problem and the Ombudsman's interventions

In 2015, the issue of providing food to a growing number of third-country nationals arriving from the Turkish shores to the Eastern Aegean islands was addressed in a fragmented and ineffective manner.

The State appeared unprepared to provide even elementary

¹⁵¹ See article of July 2016 about community kitchens in Oraiokastro, Herse and Doliaria <http://www.epiruspost.gr/reportaz/koinonia/39320-mko.html>

¹⁵² <http://www.amna.gr/articlep/133070/G-Mouzalas-sto-APE-MPE-Mauri-propaganda-parempodizei-to-ergo-tis-kubernisis-sto-prosfugiko>

¹⁵³ - “The food is not always of good quality [...] In Elaionas, the refugees, migrants and asylum seekers hosted there have made certain complaints about the quality of the food (for example lack of red meat, provision of fruit but not vegetables). [...] In Skaramangas it was reported that the cost of the services is disproportionate to the quality of the food provided. During the visit, we observed a significant quantity of the pre-packaged food portions discarded on the ground around the distribution stalls”. The living conditions in the reception and accommodation centers for migrants and refugees, December 2016, National Commission for Human Rights, www.nchr.gr
- “Ritsona: no one is eating the catering food” <http://www.tovima.gr/society/article/?aid=846363>
- “The awful food was the final straw” <http://www.efsyn.gr/arthro/athlio-syssitio-xeheilise-potiri>

¹⁵⁴ <http://www.dimokratiki.gr/06-09-2016/fotografiki-diagonismi-gia-ti-sitisi-prosfigon-ke-metanaston/>

¹⁵⁵ <http://www.elftherostypos.gr/#article/29549>

catering services, since it had no technical infrastructure, funds, or an adequate legal framework in place, either for using own funds or for disbursing the EU funds in time.

Catering was addressed as an emergency expense which burdened the police and the pre-removal centers, where such existed, based on JMD 8038/23/22-IV/2015 (Government Gazette B 118/21-1-2015) for the establishment and operation of pre-removal centers, which resulted in NGOs and solidarity groups offering meals in temporary accommodation sites, squares and streets. In several cases the third-country nationals covered the expenses by own means, buying food from local restaurants and ready meals and snacks from local shops.

In May 2015, and while the flows towards the Eastern Aegean islands were growing, an amendment included in Law 4325/2015 (Article 36) introduced a provision that extended (also retroactively) up to 31 December 2015 a possibility given for one year only by a law of 2011.¹⁵⁶ This possibility concerned the exceptional, for emergency reasons, approval of expenses without publication of a tender notice, inter alia, for the provision of alimentation to third-country nationals who irregularly entered Greece.

Considering that the majority of the third-country nationals was advancing increasingly faster from the islands to Athens and then to the borders, until they exited the country with other European states as their final destination, the provision of food to this population on the move, had a temporary nature regarding the specific recipients each time, but was a continuous need, since the numbers were renewed with continuous new arrivals of thousands of people to the islands. This ongoing need that was emerging as a new reality was not assessed adequately at the time by the State, which meant that a few months later it was forced to seek new ways to address the crisis, under the pressure of the Court of Au-

¹⁵⁶ Article 28(8) of Law 4033/2011 provided that: “With regard to issues of shelter, food, health and returns of third-country nationals that irregularly enter the country, and in particular with regard to expenses provided for by Articles 4 and 8 of Law 3907/2011 ‘Establishment of Asylum Service and First Reception Service, adaptation of the Greek legislation to the provisions of Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals and other provisions’ (A’ 7) for which emergency reasons apply for a period of one year after the entry into effect of this law and which are fully and adequately justified according to the provisions of Article 25 of Presidential Decree 60/2007 ‘Adaptation of the Greek legislation to the provisions of Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts as amended by Directive 2005/51/EC of the Commission and Directive 2005/75/EC of the European Parliament and of the Council of 16 November 2005’ (A’ 64), it is possible in the relevant public contracts for projects, preparation of studies, procurements and services, in deviation of the applicable provisions, to implement once only the negotiation procedure, without publishing a tender notice”.

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dit and under clearly more adverse conditions.

In the meanwhile, the Ombudsman had the opportunity to ascertain with on-site inspections conducted by its teams of experts the State's inability to meet these increasingly more pressing needs both on the islands of Lesbos, Chios, Samos, Leros and Kos, and in accommodation facilities of the mainland.

In June 2015, teams of experts from the Ombudsman's office carried out inspections in Lesbos, Leros and Kos, where they discovered, inter alia:

"A serious problem reported to the team was the issue that the cost of the meals is not covered through the Returns Fund, but from the state budget, a fact that results in gaps and delays. There are 3 catering companies operating on a rotating basis, which means that the quality of the food varies. Three meals are provided each day. The suppliers (3) have not been paid for months at the time of the on-site inspection and were complaining, a fact that was reflected in the quality of the food. The food is rice, pasta, potatoes, and sometimes chicken. The detainees complained about the quantity. In the area outside the fence there is a canteen, licensed by the Municipality, while an employee from a mini market comes each day at the pre-removal center to take any orders from the detainees. The Municipality informed us that a relevant license was granted to anyone that requested it". (Greek Ombudsman's on-site inspection, Lesbos, Moria, 16-17 June 2015).¹⁵⁷

"The meals were offered by the Hellenic Police, while a canteen operated on the site licensed by the Municipality. However, residents of the Park informed the team that their needs in food were not met (possibly due to small quantity and delay in distribution)". (Greek Ombudsman's on-site inspection, Lesbos, Kara Tepe, 16-17 June 2015).¹⁵⁸

"For feeding an average of 80 people on a daily basis, 160 portions (two meals per person) are distributed each day, which are provided by local businesses. The expense is covered by the police and the food includes mainly pasta and rice. For the time being, the police allegedly owes more than 45,000 euros to the local busi-

nesses. The refugees from Syria usually have the funds and stay at a hotel until they board the ship to Piraeus. Some eat in local restaurants". (Greek Ombudsman's on-site inspection, Leros, 24 June 2015).¹⁵⁹

"Part of the needs in food is covered exclusively by the voluntary offers of local hotel owners, who in cooperation with the solidarity network package and distribute around 400-450 portions a day. This corresponds to one meal a day for those who present themselves at the distribution point at Captain Elias, while the others are fed either through the charity of private individuals or (mainly the Syrians) using their own funds". (Greek Ombudsman's on-site inspection, Kos, 25 June 2015).¹⁶⁰

The Ombudsman addressed on 23 July 2015 the competent services of the ministries involved and requested that measures be taken promptly, noting that: *the local solidarity networks, non-governmental organisations such as the Doctors Without Borders/Médecins Sans Frontières, and the UNHCR, cover the actual and important gaps, which emerge related to issues of daily maintenance of the buildings and management of the needs of the third-country nationals, and the collection and distribution of food, the collection and distribution of bed covers and clothing, as well as issues of health care.*¹⁶¹

In the same document the Ombudsman noted that the financing of the food provided to arrivals in Lesbos is covered by the Hellenic Police, based on the JMD for the establishment of pre-removal centers, however, the long delay of several months in the payment of the catering expenses to the suppliers, led them in early July to declare inability to cover the relevant expenses in the future. This fact, in combination with the imposition of the capital controls and the large number of third-country nationals requiring alimentation be fed in Lesbos, created an explosive situation, which coincided with the issue of JMD 8038/23/22-Λ/2015 (Government Gazette B 1287/29-6-2015) for the extension of the operation of pre-removal centers and the coverage of expenses by the state budget.

The failure of the competent authorities to provide alimentation to third-country nationals in Kos, in June 2015, is a typical example of the inherent problems of the entire

¹⁵⁷ <http://www.synigoros.gr/resources/lesvos16-17-06-2015.pdf>

¹⁵⁸ op. cit. <http://www.synigoros.gr/resources/lesvos16-17-06-2015.pdf>

¹⁵⁹ <http://www.synigoros.gr/resources/leros24-06-2015.pdf>

¹⁶⁰ <http://www.synigoros.gr/resources/kos25-26-05-2015.pdf>

¹⁶¹ <http://www.synigoros.gr/resources/150727-stp.pdf>

management system. As the Ombudsman stressed in its document to the competent services on 23.7.2015, *the island's Port Authorities had an approved fund for alimentation of the detainees, which was distributed when the number of third-country nationals was relatively small and they were held at the Port Authority's facility. In June 2015 when the number of foreign-nationals who were staying at the Captain Elias abandoned hotel could reach even up to 1600 people, the Coast Guard could not nourish them from the above fund, because it was not possible to match the food expense with each specific third-country national. Therefore, the necessary documentation for disbursing the expense could not be legally issued. In fact, since the facility was not guarded, it was not clear which third-country nationals were under the responsibility of the Police and which of the Port Authorities at any given time.*¹⁶²

Within a few months the State was called upon to take immediate measures. In October 2015, and while its debts to the catering companies were building up, the Court of Audit found that the procedure of direct award of catering contracts was not legal and recommended to the State not to pay the amounts it owed to the supplier companies. Moreover, the preemptive audit team of the Court of Audit found that the legislative amendment that allowed the exceptional legalisation of all expenses for providing alimentation to the refugees, that were made with direct awards and were financed from state funds, was unconstitutional.

The solution was given at an institutional level with a provision that was adopted and entered into force in February 2016. In the meanwhile, and until it entered into force, the gaps, even on a temporary and fragmented basis, had to be covered by the armed forces, the Hellenic Police officers' clubs, local authorities, local churches, civil organisations and citizens showing solidarity.

Shortly before the new regulation was adopted, the Ombudsman had the opportunity to publish another one of its interventions on the subject, noting the absence of any explicit provision up to that time regarding the coverage of expenses pertaining to alimentation provided to the migrants and refugees. The Ombudsman's proposal for a possible solution was to include alimentation among the operating expenses of the Reception and Identification Service, adding that in order not to put at risk the legality of these

expenses, it would be necessary to include an explicit provision in that respect.¹⁶³

The contribution of the armed forces in the management of the crisis and, inter alia, in addressing the needs in food was instituted in the form that applies today, with Article 96 of Law 4368/2016 and was specialised with JMD No. Φ. 000/8/245258/Σ.37/2016 (Government Gazette 630/B/9-3-2016).

Specifically, the legal framework provides that the Ministry of National Defence may, by deviation of any other provision, *take all the necessary actions or enter into project, service, procurement or lease contracts with third parties regarding the establishment, construction and maintenance of the First Reception Centers (FRCs), Reception and Identification Centers (RICs) and the Open Facilities for Temporary Reception and Accommodation of refugees and migrants and the operation of these Centers and Facilities, exclusively as regards the transport, accommodation, food and health care of the refugees and migrants. The contract conclusion procedure of the previous section may, for reasons of urgent and unforeseen need, taking into consideration national security or public order reasons, which are justified specifically, be carried out following a negotiation without publication of a tender notice, in deviation of any other provision of the national legislation, without prejudice to the implementation of the European Union rules for public contracts.*

The establishment of a new framework did not of course automatically solve the problem. At a time when the armed forces started implementing the provisions of the law and gradually expanding the implementation of the food provision plans through contracts with catering services, the needs remained pressing both on the islands and the mainland. On 19 April 2016, for example, a team from the Greek Ombudsman carried out an on-site inspection at the accommodation facility in Aspri Ammos (Halkero), Kavala, where more than 250 people were accommodated, with more than half of them being minors, and discovered, among other things, the following:

"The food provided is inadequate. An army jeep brings

¹⁶³ Greek Ombudsman's comments on draft law "Amendments to Law 3907/2011 (Government Gazette A 7), amendments to Law 4251/2014 (Government Gazette A 80), adaptation of the Greek legislation to the provisions of Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection (recast) (L 180/29.6.2013) and other provisions", as published for public consultation on 5 February 2016.

¹⁶² op. cit. <http://www.synigoros.gr/resources/150727-stp.pdf>

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from the Xanthi military camp, once a day (between 13:00 - 14:30 hours), meals for the entire day, namely one portion of cooked food per person for lunch, one sandwich for dinner and cookies or a packaged croissant for the next morning. No fruit, salad or milk are provided. Private citizens regularly bring supplementary food and milk for the minors”.

The progress of the State's gradual response to the needs in food of the third-country nationals who irregularly arrived in Greece, is reflected in the announcements which the Hellenic National Defence General Staff has been issuing since May 2016 on a weekly basis.¹⁶⁴ From 27 May 2016¹⁶⁵ when it fed 22,792 people on the 5 islands and in 21 facilities on the mainland, up to 29 December 2016,¹⁶⁶ when it fed 25,062 people on the 5 islands and in 34 facilities of the mainland, the State, through the involvement of the armed forces, appears to have improved its efficiency, at least with regard to nourishment.¹⁶⁷

The Greek Ombudsman will continue to closely monitor this issue, stressing the importance of transparency, quality control and accountability at each stage of the process for the provision of food, in all the facilities, whether under State, local government or other agency control. The Ombudsman will request within the forthcoming period from the competent services the conduct and the results of systematic checks of the offered meals and the provided catering service, as well as detailed information on the award procedure followed and the monitoring of the proper execution of the contract.

3. Shortcomings in the supply of health services

The provision of health services to the mixed populations of refugees-migrants during the 2015-2016 period appears to be partial and fragmented, rather than a steady primary care serving the purpose of prevention and protection of the good health of these populations.

¹⁶⁴ <http://www.geetha.mil.gr/el/briefing-el/other-info-el/5524-draseis-syqchrmatodotoymenes-apo-e-e-gia-thn-prosfygikh-krish.html>.

¹⁶⁵ <http://www.geetha.mil.gr/media/pdf-arxeia/2016/greek/prosfigiko/20160527.pdf>

¹⁶⁶ <http://www.geetha.mil.gr/media/pdf-arxeia/2016/greek/prosfigiko/20161230.pdf>

¹⁶⁷ See relevant announcement of the Hellenic National Defence General Staff on 4 October 2016. <http://www.geetha.mil.gr/el/briefing-el/press-el/5697-diagnwismoi-sitishs-stis-domes-filoxenias-prosfygwn-metanastwn.html>

3.1. Health services at First Reception

The first link in the chain is entry into the country. While the law of 2011 required medical checks for all individuals irregularly entering the country, as a key component of the first reception services, this provision was never implemented from 2011 to this date to its full extent. In 2014, the Greek Ombudsman in its annual report (pg. 152, 154) observed that **the workload claimed by the local hospitals or simply the mobile first reception units was not an adequate reason for not providing basic medical care to the new arrivals into the country and requested medical checks for everyone**. The successive on-site inspections of 2015 and 2016 on islands such as Lesbos, Chios and Samos revealed that medical services are provided by NGOs contracted by the First Reception Service or the Ministry of National Defence, but only to those that request them. As a result there is no picture of the health statuses of all new arrivals into the country, and it was found that the health cards that are filled in for those that are examined by a doctor remain as a rule at the hotspots and do not always follow the individuals they concern in cases of their transfer, as they should.

3.2. Health services at the accommodation sites

For the people who entered the country before the 20th of March 2016 however, the rule was not to transfer them from the islands towards detention, but to grant them an official notice to leave the country within 30 days. When the borders closed, initially at the end of November 2015, and finally in February 2016 for everyone, 50,000 people were initially trapped in Eidomeni in unacceptable conditions as regards the protection of their health and their living conditions in general. During the first months of 2016 they were channelled into various temporary accommodation sites that opened urgently, under the responsibility of the army (Law 4368/2016 Article 96(1)), mainly in Central and Northern Greece. **The Ombudsman's main finding from the visits to temporary accommodation sites on the mainland in 2016, as regards the living and hygiene conditions, was a lack of uniformity in the conditions, which gives rise to legitimate questions regarding the selection of certain sites and the suitability criteria it was based on**, for example the installation of tents inside an abandoned marble quarry in Halkero, Kavala. The provision of health services varied, and was based mainly on the offer of services by NGOs and in certain cases by a military doctor.

More specifically, despite the fact that officially the Greek Army is responsible for providing health services, in reality its role is subsidiary and occasional. The main burden has been undertaken by various NGOs, which have quite different profiles and expertise, as does their staff. If this was acceptable as an emergency solution during this period of increased flows, nearly two years later the Greek State displayed the following characteristics: a) it has failed to set “conditions and specifications” for the operation of the NGOs that provide medical services; b) it has not established a framework of action (“protocol”) for their operation with regard to the treatment of the recipients of their services; c) it has not ensured - also due to the above - the use of the health facilities only in cases where they are necessary in order not to burden the health system without reason.

Having as an example two accommodation sites in Northern Greece, in Veria and Kalohori, the following were observed: a) no coordination and allocation of competences whatsoever between the health services provided by the army and the NGOs; b) zero prevention and planning in order to meet on an ongoing and quality basis the health needs of the population, except, that is, of the emergency cases; c) no monitoring regarding the capability of the NGO staff and the staff of the state agencies operating in the accommodation sites, to meet the needs of this population and provide related medical services and d) excessive, and potentially, needless use and burden to the health facilities (continuous transfers to health centers and particularly hospitals).

These observations require certain clarifications: The management, coverage and initial care of such populations requires special scientific expertise, specific medical specialisations and subjects. Thus, the “quality” of the services provided is related a lot more with this special expertise rather than the usual scientific competence, for example of a medical specialisation which cannot however meet the requirements of this specific subject. In any case, it is apparent that mainly the medical - but also the nursing - staff cannot meet the demands without the necessary training. One of the results of the above point is related to the fact that there was an exceptionally high number of visits to the local health facilities and a commitment of human resources and funds, sometimes to the expense of those who truly needed them, even from this same population staying in these facilities.

The Ombudsman noted the need for a constant and systematic coverage of the health needs of the population residing

in the camps by the state Primary Health Units, a recommendation that is still valid.

Significant in its findings on the conditions related to public health was the publication of a study by the Hellenic Center for Disease Control & Prevention¹⁶⁸ in July 2016 for temporary accommodation sites in Northern Greece, which reported that the overall picture is particularly worrying. Their selection and spatial planning was made without requesting even a simple opinion from the health services, and recommends that they are completely shut down, gradually, based on the greater risk factors from the aspect of public health. In September 2016, the Ministry of Migration Policy announced the relevant planning for closing and upgrading certain temporary accommodation sites. These plans however provided for the replacement of approximately 7000 accommodation places and was not realised until the end of the year.

It is noted that the Hellenic Center for Disease Control & Prevention with a public announcement on 22.8.2016 dispelled the rumour that the refugee/migrant accommodation centers were responsible for cases of malaria with domestic transmission. It also launched an epidemiological surveillance system in May 2016 at health care points for refugees/migrants and it regularly posted relevant releases on its website.

As regards the provision of health services, in 2016 the Hellenic Center for Disease Control & Prevention published a call for expressions of interest (11.8.2016) for various positions of doctors, nurses, administrative employees, e.g., with a project contract in the framework of an action titled “Integrated urgent health intervention for the refugee crisis”, that is financed by the EU emergency aid.¹⁶⁹ From the call there is no evidence that these contracts are connected with specific appointment to temporary accommodation sites, but they are intended for regions/health regions that are dealing with an increased pressure from the settlement of refugees/migrants.

¹⁶⁸ http://www.keelpno.gr/Portals/0/%CE%91%CF%81%CF%87%CE%B5%CE%AF%CE%B1/%CE%9D%CE%AD%CE%B1%20-%20%CE%91%CE%BD%CE%B1%CE%BA%CE%BF%CE%B9%CE%BD%CF%8E%CF%83%CE%B5%CE%B9%CF%82/2016/%CE%93%CE%BD%CF%89%CE%BC%CE%AC%CF%84%CE%B5%CF%85%CF%83%CE%B7%20%CE%9A%CE%AD%CE%BD%CF%84%CF%81%CF%89%CE%BD%20%CE%A6%CE%B9%CE%BB%CE%BF%CE%BE%CE%B5%CE%BD%CE%AF%CE%B1%CF%82_21-7-2016.pdf

¹⁶⁹ EU Emergency Aid from the Asylum, Migration and Integration Fund of the Directorate-General for Migration and Home Affairs of the European Commission.

B. Infrastructure - Facilities - Living conditions

3.3. Health

services during detention

As regards detention in the Pre-removal Centers for third-country nationals (PROKEKA), the Ombudsman had noted back in 2014 the fragmentary manner in which basic services were provided, such as a doctor, nurses, as well as services that are closely linked with efficient medical care, such as the services of a psychologist, social worker and interpreter. **There is provision for these services in the detention centers, but they are only implemented on an occasional basis, because they depend on tenders which present very long time gaps.** This issue is linked to the general problem of the stable funding of the Pre-removal Centers with the use of funds from the ordinary national programme that had been approved for Greece in the summer of 2015 by the AMIF.¹⁷⁰

The Ombudsman, during visits, found that contracted doctors of the Hellenic Center for Disease Control & Prevention provided services during 2016 both in the Pre-removal Center of Corinth and the Pre-removal Center of Tavros (Athens). The coverage however by a general practitioner and a nurse in a detention center such as the one in Tavros cannot be considered adequate. Corinth, which has a very high population of detainees (around 700 people), is also covered with the visits of a psychiatrist, but the Hellenic Center for Disease Control & Prevention does not have a daily presence, but only 3 mornings a week. Filling in a health card for each detainee, as required by the Rules of Operation of the Pre-removal Centers,¹⁷¹ and their systematic medical monitoring are still to be met in detention sites where the responsibility for the protection of the person's health lies primarily with the state. The fact that they are centers where detainees are constantly on the move, such as the PROKEKA of Tavros, which is the site for the initial gathering of the detained population under the jurisdiction of the Aliens Police Division of Attica, render even more difficult the provision of medical care, especially when the transferred individuals' medical history is not available.

It is further noted that the shortage in interpreters puts at risk the correct provision of health services to the detainees. A related problem is the inconsistent provision of pharmaceutical products and the coverage of the relevant amounts either with an occasional expenditure coverage or through the sponsorships of associations, NGOs, etc.

The living conditions in the Detention Centers also give rise to questions regarding the further exacerbation especially of the mental health of the third-country nationals from the long-term detention, in combination with the uncertainty about their future and their inadequate information. The Ombudsman notes that the concentration especially of patients with contagious diseases, such as AIDS, tuberculosis, hepatitis B and C in a dedicated wing of the building on P. Ralli Str (Athens) needs to be further investigated. A concern is also created from the doctor's standard assurance towards the members of the Independent Authority carrying out the external monitoring of the return operations starting from this center, that the patients included in the operations are not active carriers of diseases.

It should be finally noted that the Ombudsman had already recommended since 2014¹⁷² for administrative detainees that the level of medical care must be proportionate to that of the rest of the population, on the analogy of the Penitentiary Code (Article 27). The Rules of Operation of the Detention Centers in early 2015 limited the provision of services to the "necessary" medical and pharmaceutical care. The law, especially for asylum seeking¹⁷³ detainees refers to the appropriate medical care. The Ombudsman sent a detailed opinion to the Ministry of Migration Policy on the draft law that was put to consultation in October 2016 regarding the reception of the applicants for international protection (Directive 2013/33/EU (recast), 29.6.13). The Ombudsman noted among other things that the health, including mental health, of applicants in detention shall be of primary concern to national authorities, according to Article 11(1) of the Directive. Also, in Article 19 of the Directive, **the necessary medical care includes at minimum the urgent health care and the necessary treatment for diseases and serious mental disorders, as well as the provision to applicants in need of special care of the necessary medical or other assistance, including mental health care, where needed.** The relevant draft law for the reception of the applicants for international protection was not however submitted to Parliament.

¹⁷⁰ See Annual Report 2015, pg. 129.

¹⁷¹ Article 12 of JMD 8038/23/22-11/2015 (Government Gazette B 118/21-1-2015).

¹⁷² See Annual Report 2014, pg. 154.

¹⁷³ Article 46(10)(d) of Law 4375/2016.



Moria, Lesbos, 2016

C. Safeguarding
human rights -
The challenge of
the refugee crisis



C. Safeguarding human rights - The challenge of the refugee crisis

The question, regarding the degree of response of the Greek State to its obligation to safeguard the fundamental rights of individuals and populations in the context of the refugee crisis, is inevitably part of a general evaluation regarding the management of the phenomenon up to the end of 2016. The reply to this concern cannot be absolute, without risking blanket (or to the contrary overly optimistic) statements; it emerges however in broad terms later, when approaching various themes related to fundamental rights. It is self-evident that, beyond these themes - which were selected here in particular due to the Ombudsman's greater involvement, and, accordingly, the weight and duration of the violations - the totality of actions or infringements related to the presence and management of the migrant and refugee populations in Greece are intrinsically linked to fundamental rights which, accordingly, may be ensured in a satisfactory manner, may be endangered or violated to some degree, or even to their core, raising serious issues of legality in the framework of the Greek legal order.

1. The problem with administrative detention

1.1. General findings Administrative detention presents certain problems today, which appear to reflect a variety of policies, lacking the necessary cohesion at a European and national level, on the restriction of the personal liberty of irregular migrants. The deprivation of personal liberty is the most severe restriction, affecting the core of the freedom of the individual. Thus, despite the fact that administrative detention is defined as a last resort, the actual implementation and excessive use of this measure raises the legitimate question if it actually aims at deterring the migration wave into Europe.

To these policy issues there are added weaknesses of the machinery of state to adequately respond to the stipulated procedural and substantial guarantees of detention. The consequences for those who are subjected to these dysfunctions are tangible and pertain mainly to the

restriction of fundamental rights and poor living conditions. The **main issues** emerging in practice are summarised below:

- Administrative detention is not imposed as an exceptional measure, but as the norm, without examining alternative, less onerous, measures.
- It is in fact imposed as a general measure, without always being preceded by individual assessment.
- Its duration frequently exceeds the necessary measure, because it does not follow the rule of due administrative diligence for each individual case, but generalised practices and directions.
- The reasons of detention often differ from the basic legal framework of Law 3907/2011 (and the Return Directive), which provides that the legal basis must be the reasonable prospect of return of the third-country national to the country of origin, or it otherwise imposes release from detention. On the one hand the pre-existing law of detention for public order reasons survives, as an exception, albeit a generalised one, and on the other hand the EU-Turkey Statement of 18 March 2016 creates one more differentiated group - and speed - of detainees, as does the lodging of asylum applications.
- The detention sites vary, from Pre-removal Centers (Detention Centers), arranged into mass detention dormitories (e.g. Tavros, Corinth) or wings with the installation of containers, (e.g. Amygdaleza), to police station cells, which are the most inappropriate spaces from the aspect of standards. It must also be noted that the Reception and Identification Centers (hotspots) are in principle spaces designated for 25-day detention (Law 4375/2016). There are detainees of different speeds in the Detention Centers, depending on the reason of their detention.
- The Hellenic Police has not managed to date to fulfil the commitment it made two years ago, to limit administrative detention to special Pre-removal Centers and to not use police station cells for the third-country nationals waiting for return, despite the fact that the detention conditions in the latter may constitute a de facto inhuman or degrading treatment according to the criteria of Article 3 of the European Convention on Human Rights. The Hellenic Police provides - also to the Ombudsman - only the numbers of detainees in the Pre-removal Centers

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and not of all the administratively detained third-country nationals who are also held in police station cells.¹⁷⁴

- The living conditions of the detainees vary depending on the sites. The usual shortcomings are identified in cleanliness, heating, quality and quantity of food and personal hygiene products. Open air exercise (as well as entertainment activities) is very short in certain Pre-removal Centers and non-existent in police station cells. At the hotspots there are also structural problems (sewerage, etc.), while a general matter is the lack of security in their interior.¹⁷⁵
- There is provision for the basic services of doctor, psychologist, social worker and interpreter in the Detention Centers, but they are not provided because they depend on tenders which have long time gaps.
- It should be noted that in every detention site, the detainees were deprived of basic interpretation services. The lack of providing adequate and consistent information to the detainees, in a language they understand, on the legal basis, development of the detention process and their rights is one of the biggest problems in each detention facility. At the same time, it is a basic infringement of the fundamental rights of the detainees and a factor of legal uncertainty, which causes a chain reaction both for them and the detention services.
- The facilities for detention during the process of forced removal from the country are mostly inappropriate when it comes to the specifications of the Return Directive, a typical example being the cells of the Aliens Division of Attica, in the case of returns, or the police station cells of

the islands in the case of readmissions into Turkey.

- Minors continue to be held in Pre-removal Centers or police stations - although for shorter periods in 2016 - waiting for the National Center for Social Solidarity (EKKA) to find places in guest houses.¹⁷⁶
- The lack of a constant financing flow from the relevant EU fund creates problems in the provision of the necessary goods and services at the detention centers (see Chapter E1.2.).

1.2. Developments in the implementation of administrative detention in practice

The problem of the management of mixed flows, consisting of migrants and asylum seekers, on the south-east borders of the EU, is what is underlying and overshadows the issue of detention through time. However, the Ombudsman had noted up to 2015, that administrative detention contributes to the problem and not the solution, considering the large number of detainees who were deprived of their liberty for a series of months, in combination with the insecurity of the third-country nationals about their future.¹⁷⁷ This finding was in fact reinforced by the fact that the maximum limit of 18 months of detention in view of a return, which was imposed by law, was not observed (Article 30(5) to (6) of Law 3907/2011) and Directive 2008/115/EC (Article 15(5) to (6)). The Ombudsman had noted that under no circumstances is the circumvention of this limit¹⁷⁸ legal, and the relevant internal instructions of the Ministry of Public Order had to be amended, with the repeal of the acceptance of opinion No. 44/2014 of the Legal Council of the Hellenic State.¹⁷⁹

¹⁷⁴ The frequent use of Police Stations of Attica is notifiable, due to the overcrowding of the Aliens Police Division of Attica in the Pre-removal Center of Tavros (characteristically, on 7.6.2016 there were 114 men held in Police Stations of Attica). The fact that the alimentations costs of the Pre-removal Centers have no sufficient funding also appears to lead to the practice of the administrative detention of third-country nationals in police station cells, despite the Hellenic Police's commitment to the contrary. On the day of the Ombudsman's visit to the Aliens Police Division of Thessaloniki (21.10.15) there were 95 people in total held, 69 of which at the Cells of the Division and the others in the 4 "Illegal Immigration Prosecution Departments" of the Division, given the inability of the Pre-removal Center in Paranesti to receive these third-country nationals. The Ombudsman insists on the Hellenic Police's commitment for detention in the Pre-removal Centers with the specifications of Law 3907/2011. It further observes that the period of detention in the cells of the Aliens Police Division of Thessaloniki - which lasts on average 2-3 months (while there are cases of detention exceeding 6 months, e.g. 5 people on 21.10.15) for most third-country nationals, except those with Albanian origin - is not short, in combination with their number which has the characteristics of a mass detention (69 people in the Division's cells). In 2016 as well, the cells of the Aliens Division of Thessaloniki were regularly used for the detention of the third-country nationals to be returned (case 216963/2016).

¹⁷⁵ In more detail, as regards the living conditions, see Annual Report of the Greek Ombudsman 2015, pg. 151 et seq.

2015 as milestone year for the change of the policy on administrative detention

In 2015 there were two very important developments in relation to the procedures of detention of third-country nationals to be returned:

¹⁷⁶ See op. cit., Chapter A3 regarding the treatment of minors.

¹⁷⁷ "The Hellenic Police does not have the facilities and the know-how to ensure adequate guarantees for the deprivation of personal liberty in mass spaces, despite its continuous efforts for improvement of the conditions at the pre-removal centers" (<http://www.synigoros.gr/?i=human-rights.el.maziki-kratysi-allodapon.118221>).

¹⁷⁸ CJEU Katzoev C-457/09, Bashir Mohammed Ali Mahdi C-146/14.

¹⁷⁹ See Greek Ombudsman's Annual Report 2014, pg. 153.

A. In the beginning of 2015 a JMD¹⁸⁰ provided for the establishment of 7 Pre-removal (Detention) Centres: Amygdaleza and Tavros (Petrou Ralli Str.) in Athens, Corinth, Fylakio-Evros, Xanthi, Paranesti-Drama, Moria-Lesvos. The same decision set out the regulations for their operation. These facilities, which were already in operation in the previous year, as Identification Centers (centers for which there was no relevant legislative authorisation in Law 3907/2011) in 2015 were designated as special facilities for the detention of third-country nationals to be returned or deported, with reference to the specifications of Article 31 of Law 3907/2011 on the conditions of detention, according to Article 16 of the Return Directive 2008/115/EC.

B. The national elections of 25.1.2015 were followed by governmental announcements (17.2.2015) and internal instructions of the Hellenic Police on decreasing the detention time in practice, so that the third-country nationals to be returned are not held as a rule for more than 6 months and the vulnerable groups are not detained at all.

The change in policy regarding the time of the detention of third-country nationals caused a radical reduction in the number of detainees. In November 2015, the Hellenic Police informed the Ombudsman that on 3.11.2015, a total of 504 persons were being detained at the Pre-removal Centres, a number overwhelmingly lower (1/8) than the 4,123 detainees in 2014.

This huge reduction in the number of detainees in November 2015 compared to the previous year may be attributed to the government's policy that emerged from the elections of January 2015, for detention not exceeding six months as a rule, to the generalisation of the suspension of removal of Syrian citizens and later other nationalities¹⁸¹ and, in par-

ticular, to the policy of non-detention of new mass arrivals from the sea borders, mainly from June 2015 onwards, who were crossing the borders towards North-eastern Europe on the so-called West Balkan Route.

2016 and how things stand today

A major change in administrative detention was caused in 2016 by the closing of the borders on the Western Balkans Route and by the EU-Turkey Statement on 18.3.2016, directly resulting in the stay of the new arrivals at the island hotspots, under detention or restriction, the purpose being readmission into Turkey. Since the end of 2015, a differentiation in the detention policy was also observed in police station cells of the islands of the North-eastern Aegean for specific nationalities among the third-country nationals waiting for return (e.g. in the Ombudsman's inspection in Chios on 26.1.2016, citizens of Algeria, Morocco or Tunisia were found detained). This differentiation gives rise to legitimate questions about discriminatory treatment based on ethnic characteristics.

The Ombudsman noted that, in cases of expression of intention for lodging an asylum application, considering detainees for return collectively as irregular migrants depending on their nationality does not coincide with the obligation for the individual assessment of each application for international protection. The Ombudsman had a good cooperation to this end with the Pre-removal Center of Corinth, in the case of the statement of intention for lodging asylum applications by Pakistani citizens who claimed that they belong to the Ahmadiya religious minority (case No. 214862/2016).

In 2016, nationality differentiated detention was practised in Pre-removal Centers on the mainland (concerning at a percentage of 60% citizens of Pakistan, Algeria, Morocco or Tunisia at the Pre-removal Center of Corinth in December 2016), whereas the wording *prima facie* economic migrants¹⁸² was introduced into the public dialogue to differentiate by nationality certain asylum seekers who could be transferred from the islands to Pre-removal Centers of

¹⁸⁰ JMD 8038/23/22-iv/2015 (Government Gazette B 118/21-1-2015).

¹⁸¹ Regarding the true fact of the impossibility of the return of the Iraqis to the country of their origin, the Ombudsman asked the Hellenic Police to issue a circular that covers the suspension of their removal, *mutatis mutandis* to that for the Syrian citizens (document 197333/8563/3-3-2015). The same recommendation was repeated by the Ombudsman in many cases (199117, 201627, 204275/2015) until at last the issue was resolved in November 2015 with a relevant circular decree of the Hellenic Police (ref. No. 1604/15/2189144/30-11-2015) for the inclusion of the Iraqis under the non-refoulement status of the new Article 78A of Law 3386/2005. The decree issued by the Hellenic Police takes into consideration the inclusion of the Iraqi asylum seekers in the relocation program to another Member State of the European Union. The new regulation, which was instituted with Article 18 of Law 4332/2015, is also a very positive development, in response of the Ministry of Interior to the UNHCR and to the Greek Ombudsman, because it stipulates that no deportation decision is issued as of now when the conditions of the non-refoulement principle apply, but a non-removal certificate for humanitarian reasons is granted. A Hellenic Police circular (1604/15/1423412/10.8.2015)

clarified that this certificate also covers newly incoming citizens of Syria, Yemen, South Sudan, Palestine, Eritrea, Somalia. The matter however remains that the non-removal certificate for humanitarian reasons is no longer granted to the new arrivals of these ethnic categories to the islands, after the EU-Turkey Statement of 18 March 2016 (see Hellenic Police circular of 18.6.2016 at <http://www.synigoros.gr/resources/docs/egkyklios-elas-ths-18-6-2016.pdf>).

¹⁸² "Whereas before we had 80% refugees, we now have 70-80% *prima facie* migrants", Statement by the Greek Alternate Minister for Migration Policy in Parliament, 30.9.2016 (Minutes pg. 16381). <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20160930.pdf>.

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the mainland. The Turkish side however, appeared in November 2016 to be refusing the readmission of third-country nationals who have been transferred from the islands to Pre-removal Centers of the mainland. The Government then announced closed-type centers on the islands, while similar announcements were made by the European Commission in December 2016, by invoking the increase of violations of the law in overcrowded island areas. At the same time, in 2016, public order reasons are also frequently claimed for the detention of third-country nationals on the mainland. In November 2016, the number of detainees in Pre-removal Centers increased to 1583 third-country nationals, which means that they tripled compared to the previous year. The greatest concentration of detainees was seen in the Pre-removal Center of Corinth (697 detainees).

1.3. Recommendations and estimates of the Ombudsman

The Ombudsman's main recommendations pertaining to administrative detention based on the Return Directive, which were expressed before the surge of the mixed flows, but still remain current, are in summary the following:

- General limitation of the period of detention in view of removal to the absolute necessary time, with individualised and justified assessment of the necessity of the continuation of the detention of each third-country national, in combination with the feasibility or not of removal from the country and with the Administration's due diligence in moving forward the removal procedure, and
- Implementation of alternative measures to detention, according to Article 22(3) of Law 3907/2011, in order to render detention the exception, as stipulated by law (Article 30(1) of Law 3907/2011) and not the general rule, as it happens in practice.¹⁸³

As regards the new problems that emerged in 2016, the Ombudsman also made the following estimates:

- It is necessary to give specific justification of the risk to public order, according to the case law of the Supreme Administrative Court (Conseil d'Etat), in order not to have phenomena where residual provisions of the law survive

¹⁸³ The need to render detention an extraordinary measure was also noted by the UN's special rapporteur on the rights of migrants, Mr. F. Crépeau, during his visit to Greece in May 2016. (<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19972&LangID=E>).

regarding administrative detention dating before the Return Directive. The latter has introduced the objective goal of enforcing the return as a legal basis for the detention, when it is necessary because no alternative measures can be implemented, the third-country national is at risk of absconding, etc. (see Article 30 of Law 3907/2011).¹⁸⁴

- The phenomenon of re-detention, a few months later, of third-country nationals who had been released due to reaching the 18 month limit, may be considered as a violation of the maximum time limit of administrative detention, unless there are new substantial reasons,¹⁸⁵ constituting an important change in the relevant circumstances according to the Return Handbook of the European Union (par. 14.5).¹⁸⁶
- Detention in order to achieve readmission on the 5 islands where hotspots are operating after the EU-Turkey Statement, creates anew the problem of imposing detention as a general and not an individual measure, which in fact is imposed also to those voluntarily requesting their return through the IOM.¹⁸⁷ In mid-November 2016 there were approximately 16,000 people at the hotspots, who had crossed the sea borders, a number which is nearly double the total capacity of these centers.
- The use of the tool of administrative detention for regulating migrant flows is however an issue of legality, considering that under the Return Directive, the measure of proportionality is judged by the necessity of the onerous restriction of liberty, in order to achieve the purpose of removal. *The order in which the stages of the return procedure*

¹⁸⁴ Another phenomenon was witnessed, where third-country nationals released from penitentiary institutions were taken to administrative detention for public order reasons (case 212773/2016). The extensive administrative detention of released third-country nationals at the Pre-removal Centers "for reasons of public order" does not coincide with the non-punishing nature of administrative detention according to the case law of the ECtHR (case Saadi v. UK, 2008, App. No. 13229/03, par. 78).

¹⁸⁵ ECtHR judgment, John v Greece, 10-5-2007, app. No. 199/05.

¹⁸⁶ http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/return_handbook_el.pdf

¹⁸⁷ See criticism by FRA <http://fra.europa.eu/en/opinion/2016/fra-opinion-fundamental-rights-hotspots-set-greece-and-italy>, pg. 49, opinion No. 20 «FRA Opinion 20: Under Article 6 of the Charter and Article 5 of the European Convention on Human Rights (ECHR) both enshrining the right to liberty and security, detention is a limited exception to the right to liberty and as such needs to be based on a prior individual assessment. Pre-removal detention applied without assessing the risk of absconding, particularly in relation to persons who have expressed their intention to leave the EU voluntarily may fall short of this standard and become arbitrary. Unless it is determined based on an individual assessment of the specific case that there are overriding reasons to impose detention, persons having agreed to be readmitted should not be unduly restricted in their liberty».

*established by Directive 2008/115 are to take place corresponds to a gradation of the measures to be taken in order to enforce the return decision, a gradation which goes from the measure which allows the person concerned the most liberty, namely granting a period for his voluntary departure, to measures which restrict that liberty the most, namely detention.*¹⁸⁸

- The key question therefore for the administrative detention of third-country nationals, both at the Pre-removal Centers, as mentioned above, and the police cells, as well as with regard to the status of restriction on the islands, is whether the existing trend for its expansion in the end of 2016, in addition to exceeding the proportionality in the restriction of personal liberty, also reveals the ineffectiveness of the machinery of state. The detention of minors is a typical symptom of the system's failure to respond to the applications to accommodation hostels. This is added to the tendency of exhausting the initial six months of the detention in Pre-removal Centers for return, without the due diligence of implementing the forced removal, as stipulated by law. The overcrowding and friction with local communities at the hotspots are also due to the fact that nearly a year after the entry into force of the EU-Turkey Statement, the first reception, asylum and appeal procedures on the islands are based in principle on detention due to delays. It is characteristic that the first person from Syria to appeal at the Supreme Administrative Court (Conseil d'Etat), against a decision of the new Appeals Committees, which found his application for asylum in Greece inadmissible, is detained since September 2016 at the Police Station cells of Lesbos,¹⁸⁹ in conditions that do not coincide with the reception requirements of asylum seekers according to the relevant EU Directive but neither with the EU Charter of Fundamental Rights.

2. Access to education

Assuring in practice the established by international law¹⁹⁰ right of minors to unobstructed access to education, was a particular challenge for the Greek State, since, according to a general estimate, the minors amount to more than

¹⁸⁸ CJEU El Dridi, C-61/11 PPU, 28.4.2011.

¹⁸⁹ He is still being detained up to the time of the completion of this report (March 2017).

¹⁹⁰ Article 28 of the International Convention on the Rights of the Child (Law 2101/1992).

1/3 of the foreign population that has entered the country in massive numbers over the past two years.¹⁹¹ Therefore, also bearing in mind the rapid increase of the refugee and migrant populations in mid-2015, both the difficulty and the importance of the response of the Greek State to the relevant obligation becomes clear. In particular, the Ombudsman came to the following conclusions that pertain to the two-year period under review:

2.1. The exercise of the right of children from third countries to education during the 2015-2016 period

The exercise of the right to education of children from third countries including children on the move, was implemented during the 2015-2016 period with significant shortages and obstacles. As a general rule however, we highlight the effort of the Greek State to respond to particularly demanding circumstances and educational needs that are frequently changing.

The increased inflow of mainly migrant populations over the past decades - without however the massiveness and intensity of the past two years - had allowed the gradual adaptation of the legislative framework¹⁹² and, in particular, had prepared to a certain degree the educational system to respond to requests for access to school by foreign children with the development of tools, such as the Reception Classes of Educational Priority Zones, placement exams and the intercultural education system. On this basis, minors, refugees and migrants, who for any reason remained in Greece and did not continue on their journey to other European states, were integrated, without serious problems during 2015 and in early 2016.

The change in the circumstances from March 2016, marked, inter alia, the consolidation of the presence in the country of a large number of minors, who had crossed or were crossing the Greek borders with or without their families, and could not continue on their journey to the countries of their destination. Therefore, the Greek State was invited

¹⁹¹ It is indicatively mentioned that the total number of children that arrived in year 2016, is estimated at approximately 64,000, at between 37-38% of the total arrivals in the same year (Sources: UNHCR, Regional Bureau Europe, Refugees' & Migrants' Sea Arrivals In Europe, Monthly Data Update: September 2016, UNICEF, Refugee and Migrant Children in Greece, as of 31 December 2016).

¹⁹² See relevant legislation that expressly stipulated that: "Minor third country nationals, who reside in Greece, are subject to compulsory school attendance, as do Greeks", allowing in fact their enrolment by exception, even if they are missing supporting documents (Law 3386/2005, Article 72, as amended and in force with Article 21 of Law 4251/2015).

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in the spring of 2016, in view of the start of the next school year (2016-2017), to prepare a program for the educational integration of these children, according to the special needs and conditions of their stay. The project was and is, without doubt, a particularly demanding endeavour for the competent ministry, since it pertains to significant numbers of heterogeneous populations of a school age, a big percentage of which come from war zones and/or have experienced extreme hardships. Also, they have different needs and family planning, a different educational background and academic level, different presence and distribution at places on the mainland and the islands, and different frameworks within which they used to live and are currently living. At the same time, we could not overlook, during the formulation of the educational policy for these children, the pressure exerted due to the cautious - if not negative - attitude of certain local communities to the possibility of (especially of a massive scale) inclusion of third country nationals in the schools of their area.

Within this framework, the Greek State chose to implement two parallel systems: a) enrolment and attendance at the regular school curriculum (for children accommodated outside accommodation centers and facilities) and b) integration in Facilities for the Reception and Education of Refugees (DYEP) for the rest of the cases. In particular, the planning of the DYEPs aimed at meeting the need for a gradual educational integration of minor refugee populations living in accommodation centers or facilities of the Greek state or the UNHCR, and to prevent any tensions and excessive burden on the basic educational system, without the appropriate preparation. In other words, this educational choice was addressed mainly to mass populations, without social integration, and not isolated cases of children living within the urban fabric.

Following the preparation of a plan by a competent committee of the Ministry of Education,¹⁹³ as well as the corresponding planning of a special educational programme for the DYEPs by the Institute of Educational Policy, the programme was instituted¹⁹⁴ and gradually, with obstacles, started to be realised from October 2016 with the establishment of new DYEPs and their corresponding staffing. In

December of 2016, there were approximately 10 DYEPs in operation, with the exact number changing almost daily due to the progress of the procedure.

2.2. General findings and interventions of the Greek Ombudsman

The Greek Ombudsman, in its role for the protection and promotion of children's rights, intensified its efforts and actions during this transitional period - especially after the rapid increase of the population of minors who were residing in Greece for long periods - ¹⁹⁵ to activate in a supportive way a mechanism for the systematic monitoring of the status of the rights of children on the move. During 2015-2016 it carried out more than 80 visits to 66 sites across the country (such as open accommodation centers, unaccompanied minor facilities, reception and identification centers, detention facilities, etc.) as well as visits to schools where children refugees are attending (both the morning programme and DYEPs). Meetings were also held with agencies, members of the Ministry of Education, the scientific committee that prepared the plan for the education of the children refugees, representatives of intergovernmental and non-governmental organisations, teachers and parents. At the same time, the independent authority took part in events aimed at informing and raising the awareness of local communities organised by regional directorates of education and, in general, has publicly intervened for the protection of the right to education, the protection of the image of children refugees, as well as the issue of the reaction of certain parent and guardian associations against the attendance of children refugees at the schools. Finally, the Ombudsman raised, and continues to consistently raise the issue at European level, providing information and recommendations, in the context of meetings and conferences abroad, and with a stable cooperation with the European Commission, the Council of Europe and the European Network of Ombudspersons for Children.¹⁹⁶

Further to the systematic monitoring of the implementation of the planning for assuring the attendance of foreign students, the Ombudsman ascertained, as already mentioned, the intensive effort by the Ministry of Education, as well as a

¹⁹³ This is the Experts Committee that was established with the purpose of assisting the work of the Committee for Supporting the Children of the Refugees with a MD in March 2016 (ΓΤ1 / 47079/ 18-3-2016).

¹⁹⁴ Law 4415/2016, Article 38 JMD 152360/ΓΔ4/16 (Government Gazette 3049 B/23092016) which was repealed with JMD 180647/ΓΔ4/2016 (Government Gazette 3502/2016/B/31-10-2016).

¹⁹⁵ To this purpose it used the support of the intergovernmental organisation UNICEF.

¹⁹⁶ The recent interventions and findings of the Ombudsman on the rights of children refugees and migrants staying in our country are posted on a dedicated page on the website: www.O-18.gr.

series of important problems and gaps, related to the situation during the 2015-2016 period. The general estimate in fact of the independent authority was that a large part of the issues, which are listed briefly below, arise from the lack of coordination and a systematic method, as well as partially from the lack of experience in administrative procedures and the use of funds, a fact that appears to be confirmed by the Ministry of Education.¹⁹⁷

2.3. Attendance of regular school curriculum

Despite the fact that, in broad terms, children from third countries have been integrated into the educational system these recent years without obstacles, there was a number of cases of student exclusion, usually because they were missing supporting documents,¹⁹⁸ and in other cases because of a lack of reception classes or the school invoking lack of capacity, which is however something that was not always verified. This practice unfortunately in a large number of cases discouraged those interested and resulted in children staying out of school, also bearing in mind the other deterrents (fear due to not knowing the language and the procedures, unregulated residence status, different culture, etc.). Such types of phenomena unfortunately continued during 2016, when - as already reported - the number of third-country national minors who were requesting to attend the schools of the areas where they lived, within the urban fabric, increased. As a result, applications increased significantly, without a corresponding programming in the school units, and a large number of the applications were referred to the Directorates of Education, in some of which waiting lists were created, and in any case there were long delays until schools were found with the capacity for enrolling the children. There were however positive practices of successful enrolment of refugees in schools, despite the lack of reception classes, with a different type of support by the available teachers (e.g. integration classes).

Following the Ombudsman's interventions and the relevant report,¹⁹⁹ the Ministry of Education clarified with circulars

in the summer of 2016 that, according to the law, children from third countries can normally enrol in Greek schools, even with incomplete documentation²⁰⁰ A circular²⁰¹ also provided for an enrolment procedure and a possible geographical distribution, in the event of enrolment of a large number of students from third countries in the school units, in order to ensure the smooth functioning of the schools. However, the refugees continue to encounter serious delays and hardships²⁰² up to the end of 2016, despite the above regulations.

Moreover, there was no provision at the high schools of the country for the operation of reception classes, resulting in many cases in the exclusion of the relevant age group (13-18) from school, as a) inter-cultural educational schools have limited capacity, b) some senior high schools (lyceums) refuse to enrol minors from third countries, with the (erroneous) argument that, since attendance in senior high school (lyceum) is not compulsory, they do not have to accept them, and c) the curriculum of high school courses is particularly difficult for children who do not know the Greek language, and becomes prohibitive unless there is proper support.

As already mentioned, the institution of reception classes is already having a positive effect in the country's primary schools, supporting the smooth integration of students from third countries, especially where there is a mass turnout. On the basis of this positive evaluation, the first concern is to ensure the maximum possible flexibility regarding the creation of these classes, bearing in mind that the relative need may arise in some schools during the course of the year. In addition, it is deemed absolutely necessary to extend the institution more broadly in secondary education in order to achieve equal access for these children and to prevent exclusionary phenomena (where DYEPs or secondary schools of intercultural education centers are not operating close to the place of residence or do not have places available). The

¹⁹⁷ Document of reply No. 292/14-2-2017 of the Ministry of Education to the Greek Ombudsman.

¹⁹⁸ Indeed, the Ombudsman had intervened throughout the critical period (2015-2016) - as well as much earlier - in cases of refusal by schools, due to missing supporting documents, to normally enrol minors from third countries or to allow them to be promoted to the next grade. It was in fact common irregular practice to make these children attend lessons under the status of listener, for which there is no provision in law, ultimately making their educational (but also social) integration more difficult.

¹⁹⁹ With subject: Non enrolment and non-promotion to the next grade of minor students from third countries, due to incomplete enrolment documentation (<http://www.synigoros.gr/resources/462193.pdf>), the content of which was included in

circulars issued by the Ministry of Education.

²⁰⁰ Circular No. 108457/Δ2 dated 4.7.2016 (Circular related to the enrolment of students from third countries with incomplete documentation in Secondary Education school units of the country).

²⁰¹ Circular No. Φ1/143733/Δ2 dated 7.9.2016 ("Enrolments of students from third countries").

²⁰² Indicatively, we mention a frequent practice (especially when there are more than one applications), where the school of the place of residence refers, due to lack of a reception class, to the remote intercultural education school, which also refuses due to lack of capacity, and a solution is sought through the Directorate, with cases ending at DYEPs that are extremely remote, and with a long wait until actual integration.

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reception classes will also help avoid the phenomenon of older children being enrolled in primary education due to not knowing the language, a practice that would entail reasonable difficulties and reactions.

It is easily understood that, in addition to the overall institutional interventions, the Ombudsman has mediated in a significant number of cases over the past two years in order to any identifiable obstacles to enrollment be removed and the State's obligation to be fulfilled.

2.4. Planning and operation of the Refugee Reception and Education Facilities (DYEP)

Despite the efforts made by the Ministry of Education to ensure the smooth launch of the DYEPs, a number of problems, some of which could have been prevented, were observed in the educational facilities that did start operating in October 2016:

- A.** In many cases the teachers who had been selected to teach had not been trained on the needs and characteristics of the particular student population, the teaching of Greek as a foreign language, non-verbal - experiential teaching practices, group empowerment practices and issues of conflict management and resolution. Also, they were in their majority substitute part-time (15 hours) teachers, despite being asked to perform particularly difficult work, which requires constant research and planning of specialised educational material (since they had not been given any such material), as well as continuous training - support. As a result of the way in which appointments were organized, several teachers who received full-time appointments in the meantime, withdrew from the DYEPs, which resulted in a host of problems emerging. For these reasons the Ombudsman recommended the appointment in the DYEPs of teachers who have expressed the will to teach refugee children and the implementation of a program of continuous training²⁰³ and support on a regular weekly basis (by school counselors, psychologists and other specialists).²⁰⁴
- B.** A characteristic example of lack of coordination of the relevant ministries is the shutting down of some accom-

modation sites by a decision of the General Secretariat for Migration Policy without having informed in advance the Ministry of Education, which resulted in DYEPs having already been established and staffed in the meanwhile. In these cases, serious difficulties have been caused by the fact that teachers recruited for DYEPs were found without any subject matter, making it difficult to easily use them in another position, due to administrative obstacles and often insufficient information by the Ministry of Migration Policy regarding the permanent or temporary character of the evacuation of the accommodation site.²⁰⁵

- C.** An important issue in the operation of the DYEPs was the shortage of interpreters - cultural mediators, especially during the stage of preparation and the first days of operation, as well as later, a fact that made any efforts to communicate with the children (and the parents) and the management of problems a lot more difficult.
- D.** Refugee Education Coordinators (SEPs), who were assigned to accommodation sites and undertook the organization and coordination for the implementation of the DYEP program, were required to perform their duties without adequate facilities and material-technical equipment (offices, computers, printers, telephones etc.), with the result that these needs were often covered by the employees themselves.
- E.** The way in which the coordinators' competences and tasks were described, besides containing vague points,²⁰⁶ did not leave room for flexibility in the implementation of their mission.
- F.** Furthermore, the Ministry of Education had not clarified the issue of the titles awarded to students attending DYEPs and the certification (possibly by means of a certificate) of the attendance of students leaving during the year as they move to another EU Member State. The importance of this omission is self-evident both for the children who will remain in Greece and for those who will seek to be integrated into a new educational system. In particular, as regards the certification of successful attendance at the end of the school year, it appears in practice to cre-

²⁰³ Through the Institute of Educational Policy (IEP), which was designated responsible for the implementation of the Action "Training actions to support the education of refugees", although at an exceptionally slow pace.

²⁰⁴ Ombudsman's letter with ref.No..1500.2/48194/2016 to the Ministry of Education.

²⁰⁵ This problem was described in detail in document of reply with ref. No. 292/14-2-2017 of the Ministry of Education to the Ombudsman with subject: "Reply to questions and provision of information".

²⁰⁶ A result of the obscure framework was the confusion of competences that arose in practice, which led to almost daily communications of the SEPs with the relevant ministry and the issuing of successive clarification circulars.

ate “two-speed” pupils, in principle on the sole criterion of their place of residence: for minors coming from mass accommodation sites (in which case they are included in DYEPs) it is not clear in the applicable framework,²⁰⁷ whether it will be considered that they graduated from a specific primary school or high school class, so that the next school year they can enrol regularly in the next grade (possibly in the regular programme). To the contrary, promotion to the next grade is certain - subject of course to adequate attendance and performance - for the children enrolled at the schools of their place of residence or of intercultural education.

- G. In many accommodation sites, we found that the people responsible for running them and the SEPs had been inadequately informed by the competent ministry and there was a delay in the start of the operation of the DYEPs, even though the vaccinations of the children had been completed in time and preparatory actions had been made for the integration of the children in education. Thus, it appears that the heads of the sites, the residents or even the SEPs are not aware when the DYEPs in their area will start operating and in which schools.
- H. A significant gap in the implementation of the DYEP programme is considered to be the fact that **by the end of 2016 the operation of the (branches of) kindergartens within the accommodation sites had not started**, as provided for by law, despite the preparation and the existence of relevant infrastructure in several sites.²⁰⁸
- I. Pending, despite the Ombudsman’s repeated interventions towards the competent ministry, remained up to the end of 2016 **the issue of the school attendance of children above 15 years old, for which the establishment of DYEPs had not been foreseen (with Lyceum classes), nor had the recommendations of the Experts committee been implemented.**²⁰⁹

²⁰⁷ An exception appears to be the attendance of kindergarten at the DYEPs, which did not however operate until the end of 2016 at the accommodation sites, since attendance is recognised by the law as attendance of a kindergarten branch.

²⁰⁸ Op. cit., document of reply with ref. no. 292/14-2-2017 of the Ministry of Education, according to which the kindergartens within the accommodation centers did not operate initially due to a change in the legislation on procurements (therefore the containers were not procured in time and a new financing source needed to be found) and delays in the technical control and certification of the suitability of the existing structures.

²⁰⁹ See letters with ref.No.1500.2/48194/2016 and 1500.2/8335/2017 of the Greek Ombudsman to the Ministry of Education.

Access to education of children residing in Eastern Aegean islands

The situation on the Aegean islands during the 2015-2016 period had caused the strong concern of the Greek Ombudsman, since no DYEP had started operating despite the large number of children remaining for long periods at the island Reception and Identification Centers. Certain children however staying in temporary accommodation facilities for unaccompanied minors and apartments had started during the 2016-2017 period to attend morning schools - this however was not the rule, especially due to the negative attitude of the local communities and the corresponding hesitation on the part of those in charge.

Information of parties involved in the educational process

With the purpose of informing the parents of the students already attending morning schools, in relation to the protection of the health of their children and in general the smooth functioning of the schools wherever children refugees were integrated, several initiatives were taken at local level, as well as through the Ministry. However, the picture which the Ombudsman has formed shows that in certain cases there were still significant delays in the enrolment of the students until the completion of all the vaccinations and the lapse of an indefinite period of time, due to the lack of responsible medical information of those in charge, and the reaction of members of the local communities to the attendance of the children at DYEPs. The later reaction stemmed to a great extent from the concern - also due to inadequate preparation and information - regarding the transmission of diseases to the Greek students using the same facilities (even though at different times). To this end, the Ombudsman asked the Ministry of Education for information regarding any plan or program on this issue and for the intensification of the efforts. Moreover, the Ombudsman cooperated with the Hellenic Center for Disease Control & Prevention, contributing in the creation of audiovisual material with the aim of disseminating the information.²¹⁰

Furthermore, it was pointed out to the State that it must show similar diligence in order to inform and raise the awareness also of the parents of the children on the move, who need to know the current legal framework of our country, both as regards compulsory school attendance and other relevant issues (e.g. what happens in the case of inade-

²¹⁰ <https://www.youtube.com/watch?v=fuqLOhLKNJE>

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quate attendance, student behavioural problems in schools, informing the school about incidents of domestic violence, etc.). Although the relevant information is provided in practice by the SEPs with the assistance of organizations that intervene in the accommodation sites, the Ombudsman has recommended to the ministry the production of information material in the most common languages of the refugees/migrants.

Following the same logic, of mutual familiarisation and the fight against xenophobic tendencies, the Ombudsman recommended a more flexible framework for the operation of the DYEPs, through a suitable reform of the framework. More specifically, due to the nature and mission of the DYEPs, it is important to facilitate the participation of intercultural mediators, the organisation of a multitude of social and cultural events inside or outside the school unit and the participation in them, the cooperation and collaboration of morning schools with DYEPs, the voluntary participation of pedagogic science students at the schools with a supporting role, etc.

2.5 Evaluation of the educational integration program

Finally, bearing in mind that it was not possible to foresee whether the DYEP program would need to be continued within 2017, the Ombudsman stressed the need to evalu-

ate the implementation of the program, in order to record any shortcomings and the general issues, and to ensure its optimum operation in the coming period. In the same spirit, the Ministry of Education was asked to ensure in time the programming of the next school year, if circumstances of course require the continuation of the operation of the DYEPs, to avoid any delays and organisational problems, which would inevitably lead to a violation of the children's right to education.

3. Security issues of the refugee/migrant population

The issue of security pertains firstly to the arriving third-country nationals and secondly to the Greek society which is inevitably affected by the mass inflow. Under this prism, we realise that the state mechanisms were called upon during the 2015-2016 period, often under extreme pressure, to fulfil the corresponding obligation, providing the guarantees for the exercise of the individual rights, and also to prevent

circumstances and conditions that cause the sense of safety to be shaken in the local communities and fuel xenophobic attitudes.

The security of the persons living in the country under any conditions, is the highest duty of the State institutions, and it goes without saying that the safety of the newly arriving third country nationals and the applicants for international protection should be the concern of the competent authorities.

It must be noted that during the two-year period under examination, a significant change to the treatment of the third-country nationals, asylum seekers, new and/or irregular arrivals, took place, regarding their detention: up to the start of 2015, the competent authorities, mainly the police, considered security - in relation to the above categories of persons - to be the security of the public. A result of this view was that third-country nationals were seen as a threat to public order and security, and their administrative detention was therefore imposed indiscriminately. The Pre-removal Centers were founded in 2015 and, at the same time, the detention time of the third-country nationals to be returned was decreased (up to 6 months), whereas anyone belonging to vulnerable groups was not detained.²¹¹ However, despite these developments, the competent authorities appear not to display the appropriate care for the protection of these individuals in conditions of liberty.

The experience of the summer of 2015 was typical in this aspect, with thousands of people entering the country, staying in temporary, and usually inappropriate accommodation sites, receiving an official notice in order to depart voluntarily, and to then continue on their route using their own means - and usually facilitated by smugglers - without any control and/or intervention of the state authorities. The lack of any control pertained also to cases where there were reports of criminal acts (e.g. payment of monetary amounts for transport to another country, which did not take place in the end), as well as more serious suspicions or reports for the potential commitment of particularly serious crimes (e.g. human trafficking, personal injuries). A common finding, even of those watching "from a distance", was that from the islands of the Aegean up to Eidomeni, there was a peculiar situation prevailing, where the state authorities had simply the role of "observer".

²¹¹ For more detail, see Chapter C1.

The geographical distribution of this population changed after the closing of the informal crossing of Eidomeni - Gevgelija at the borders between Greece and FYROM in February 2016, resulting in a significant number of third-country nationals remaining in mainland Greece in temporary accommodation sites, which were created throughout the country. However, it appears that no special care was taken for the operation and guarding of these spaces, in order to ensure their unhindered operation. Also, after the EU-Turkey Statement of 18 March 2016, a large number of new arrivals remains on the islands of Lesbos, Samos, Chios, Leros and Kos.

At this point, it should of course be mentioned that the time and conditions under which the specific facilities were created, were particularly pressing. **Bearing in mind the fact that up to the final “closing” of the Balkan route there were very few facilities operating in the country, the argument of “emergency” could be convincing, if it was not preceded by the lack of any provision or far-sightedness of the state authorities in assessing the developments that were already under way.**

3.1. Developments in the legislative framework

However, even when temporary accommodation sites were created across the country, the competent agencies appear to have attributed the lack of measures for the security and protection of their residents to the lack of a clear legislative framework. According to the Ombudsman’s assessment however, the problem was not the lack of a legislative framework, but its ineffective implementation and, in particular, the lack of any organisation and operation. Already before 2015, the competent first reception authority, which had been established by Law 3907/2011, had not managed to operate fully and to develop facilities across the country. Therefore, considering the special circumstances of 2015 one realises that the inadequacy and lack of vigilance was a more complex problem.

Nevertheless, the solution of the new legislative framework was chosen, with the enactment of Law 4375/2016. With this law the Greek State is attempting to reform, inter alia, the Reception and Identification Service, as well as the system for the reception of the international protection applicants and the vulnerable groups. As regards the security of the reception and accommodation sites, there is provision in Article 13(2)(b) of Law 4375/2016 that: *“As part of his/her duties, the Director of the Reception and Identification Center shall cooperate with the head of the identification and national-*

ity certification and external security teams, who is responsible for the operation of the police services. He/she shall direct the staff assigned by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (EU), who operate inside the Center”. In particular, there is provision (Article 16(1)) that: *“Responsible for the security of the facilities of the Regional Services of the Reception and Identification Service is the Hellenic Police. The security of the open Facilities for Temporary Reception and Temporary Accommodation may also be assigned to the staff of a private security service company, which is appropriately trained. A decision of the Minister of Interior and Administrative Reform, specifies the type, content and duration of the training of the staff of the above companies, as well as the Services of the Hellenic Police that provide it”.*

3.2. Interventions of the Greek Ombudsman

The situation prevailing up to February 2016, mainly on the islands of the North-East and South Aegean, with serious problems regarding the conditions of reception of the refugee and migrant populations, their stay in temporary accommodations until their registration, and then their departure with final destination usually countries of Northern Europe through the so-called Western Balkan Route, was the subject of criticism by the Greek Ombudsman, since the State had nearly no involvement in the protection of these people.²¹²

The Greek Ombudsman has already noted since 2015, that the mass movement of refugee populations in Europe, creates de facto situations at the points of exit, which without affecting the application of the Schengen regulations or any national provisions, cannot be ignored by the competent state bodies. In the context of the visit of a joint team of the Ombudsmen of Greece and FYROM to the temporary refugee sites at the borders of the two neighbouring countries (17.11.2015), in Eidomeni and Vojjug, the Ombudsman had the opportunity to discover that the refugee accommodation camp in Eidomeni was operating without any participation or coordination by the State. It was in fact based on the voluntary work and offer of food, products and services by the UNHCR, the IOM and the NGOs operating in the refugee camp.

The Ombudsman had noted the State’s duty to care for the security of individuals. Furthermore, it had underlined the

²¹² Annual Report 2015, <https://www.synigoros.gr/resources/docs/ee2015-04-prosigliko.pdf>.

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need for special attention regarding the protection of the populations transported by facilitators, human trafficking networks, or existing phenomena of financial exploitation. The independent authority had also developed a cooperation with peer institutions in all the neighbouring countries on the basis of their mission to protect human rights and the basic principles of the rule of law in the context of the challenges of the refugee crisis. In view of this collaboration it notes and continues to note the need to formulate a joint operational plan and to improve the coordination, especially between neighbouring states.²¹³

Despite the fact that in 2016, as mentioned above, the circumstances changed, the issues related to the security of individuals continued to be particularly important. These matters were recorded in the Ombudsman's Annual Report which summarises the debate on the situation prevailing in the reception and accommodation facilities, as well as the temporary shelter or accommodation sites, as follows: *"The better coordination of the services operating in the hotspots remains the goal regarding the information, security of the residents, the pre-registration and lodging of asylum applications, as well as regarding the full operation of the reception services in them, with medical and psychosocial services to all the new arrivals for the assessment of any vulnerability (victims of torture or human trafficking, beneficiaries of international protection, pregnant women, unaccompanied minors, the elderly, persons with health problems, etc.). The issue of the appointment of permanent directors of the hotspots, reinforcement of the first reception services with members and funds as well as their more integrated operation according to the mandates of the law continues to be therefore a critical issue for the rational management of mixed flows"*.²¹⁴

Similar findings on the shortages in the RICs (hotspots) and the temporary accommodation sites, as well as the risks to security in these areas have been identified by EU agencies²¹⁵ and international organisations.²¹⁶ Special reference is made to the need to improve the reception conditions, which is estimated to also help with the prevention and fight against sexual and gender violence, to which many vulner-

able asylum applicants are exposed, including women and children, in the accommodation facilities. The UNHCR continues to support the establishment of suitable identification, referral and support systems for the victims, including the provision of legal, medical and psychosocial care and secure accommodation (see also Chapter B 1.1.).²¹⁷

As arises from complaints published from time to time, children, young people, women who are alone or with minor children, appear to be the most vulnerable link in the chain of individuals who could become victims of violence, sexual exploitation, attack or harassment, primarily in non-organised camps (Piraeus, Elliniko), without being able to exclude the phenomenon also in organised temporary accommodation sites. The Ombudsman is engaging in a continuous dialogue with the Hellenic Police, in order to ensure the protection of the migrants and refugees also from phenomena of gender violence, sexual abuse or exploitation inside the hotspots.

The other side of assuring the personal right to absolute protection of life, honour and liberty (Article 5(2) of the Constitution), is related to the Greek society which is experiencing in recent years its own refugee crisis. In this light, the sense of (deficient) security or phenomena where personal safety and property are at risk could not be ignored when addressing this subject. *The sense of safety enjoyed by citizens, or to the contrary, the insecurity and fear of victimisation that are attributed to the presence of refugee and migration populations, are to a great extent a consequence of the relationships created in the places of the temporary or more permanent stay of these populations, as well as the frequently (xeno)phobic public debate.* The argument in fact of the risk to the security of the citizens due to the increased refugee-migrant presence was used at times also to legitimise decisions and practices with a repressive and liberty-restricting nature, such as those described above.

4. Relationship with local community

4.1. Key factors During the period under review and up to this date, the picture formed regarding the shortcomings, problems or good practices, and in general the functional conditions of co-existence of the new arrivals with the permanent residents, is not uniform. The contact of the refugee/migrant populations with the local

²¹³ Ibid.

²¹⁴ Annual Report 2016 at: <https://www.synigoros.gr/resources/ee2016-04-prosfigiko.pdf>.

²¹⁵ European Union Agency for Fundamental Rights –FRA, Monthly data collection on the migration situation in the EU, February 2017 Highlights, 1–31 January 2017.

²¹⁶ UNHCR, Press Release, 27.03.2017, "UNHCR: stronger cooperation crucial to ensure sustainable refugee response in Greece".

²¹⁷ Ibid.

communities continues to vary, even though the areas where they remained in the end for reception, detention or refugee accommodation are as a rule outside the urban fabric, and usually at a fairly large distance from residential areas.

A stable reference point in the relationship of the third-country nationals with the local community and the State was their intention to leave Greece and the corresponding willingness of the local community and the State to informally facilitate them, with actions or omissions, to realise this exact intention. On this basis, the reaction of the local communities to the arrival of large groups of foreigners, initially on the Greek islands close to the Turkish coasts of the Aegean, and then on the mainland, was not expressed at all places and all times in the same way. The key factors that influenced the situation were the following:

- the (estimated) time of the stay of the third-country nationals;
- the type/adequacy of facilities and the degree of responsiveness of the services;
- the nationality and family status of the third-country nationals;
- the public debate (Press, local authorities, church, etc.);
- the local economy and society (e.g. university/students, tourism/agricultural production etc.).

For example, in the summer of 2015, thousands of Syrians who were arriving in Lesbos, not only did not encounter any problems, but were actually helped by the local community, who were aware that, despite the inadequate facilities (sometimes due to those inadequacies), the refugees would be forwarded within 1-3 days by boat to the mainland. On the other side, in early 2016, Pakistanis arriving to Kos were facing serious reactions by groups of citizens, who together with the municipal authority were requesting that all third-country nationals were immediately removed from the island.

4.2. Being “trapped” and facing inefficiencies The closing of the informal Balkan Route, in early 2016, had as a first consequence the creation of new unofficial camps and the growth of old ones (e.g. Eidomeni, Elliniko, Piraeus port, etc.). This in turn was considered by a large part of the Press to

confirm the grimmest omens on thousands of third-country nationals being “trapped” in Greece, and on the creation of an unclear, but frequently called “uncontrolled situation”, which posed “serious risks” for the security, health, properties, etc., of the permanent residents. The bombardment of the public opinion with images of deprivation from the unofficial accommodation sites, the emphatic publication of incidents of violence or delinquency in general and the frequent, in part of the Press, construction of a peculiar social-moral panic, had a decisive influence on the public debate of local authorities and agencies. On the one hand, it appeared to be justifying those who from the start exerted pressure on the central government, investing in fear and promoting stereotypes, and on the other hand discouraged those who had chosen a more dispassionate view of the phenomenon within the context of the rule of law.

In the months that followed, despite the sudden drop in the number of the people who crossed the Aegean with boats and the corresponding decrease of the number of those being forwarded to the mainland, this largely self-referential negative climate appeared to be expanding even to areas which had stayed away from such problems up to that time, whether thanks to active local solidarity initiatives, or due to the creation of a new economic activity centered on the needs of the new arrivals.

A series of shortcomings, shortages, omissions and fragmented actions of the central administration did not help to create a potentially better relationship between the local community and the new arrivals. For example, the creation - initially on a temporary basis and then with indefinite duration - of informal accommodation facilities for third-country nationals in urban communal spaces, such as squares, parks and archaeological monuments, the negligence in the registration of the individuals arriving by boat on the islands over a period of many months, the absence in the beginning and then the inadequacy of official accommodation facilities, the initially inadequate provision of food and medical and pharmaceutical care, the confusion with regard to the responsibilities, competences and procedures due to the frequent changes in the legal framework, the confusion regarding the closed (detention) or open nature of the facilities and, finally, making promises that were not kept, fuelled the feeling of an inadequate presence, if not complete absence, of the State and sometimes caused acute reactions.

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4.3. The Greek Ombudsman's conclusions

The Greek Ombudsman had the opportunity to visit numerous facilities on the mainland and the facilities on the five islands. With the opportunity of these visits, the Ombudsman's teams held meetings with the local authorities, usually the mayor, relevant Vice-mayors, the chief of the police and (on the islands) the port authorities, the local solidarity movements and representatives of international organisations active on this subject. The main findings regarding the relationships of refugees/migrants with the local community are the following, per thematic group:

Economy Most reactions, based on arguments from the area of economy, to the sudden arrival of thousands of migrants/refugees, were seen on the five islands of the Aegean, particularly in areas where a significant part of the economy is based on the revenues mainly from the stay of foreign tourists. In Kos, for example, where the local economy literally depends on the summer arrivals of Europeans and Americans, the reactions were stronger. In Lesbos, where a large part of the economic activity is based on agricultural production, processing and trade, the reactions were milder. Thus, the local public opinion varied from simple concern to strong displeasure on the negative image, which according to the local Press, the island was acquiring from the presence of thousands of refugees/migrants. *Based on these characteristics, in the case of the five islands, the reactions recorded were not a classic case of xenophobia, but a kind of intolerance of the impoverished individual.* The local community was in fact used to the presence of foreigners, which of course it desired and still desires. A part however of the local community preferred the foreigners to be holidaymakers, which means that they are basically well-off and carry out economic transactions on the island. It would be particularly interesting to study the reaction of this portion of the public opinion to the temporary accommodation model, according to which each refugee/migrant is offered accommodation in a rental apartment or room, and granted an amount, which is spent for food and other needs.

We also observed exploitation phenomena of the third-country nationals (overpricing of goods and services) due to the distance and movement restriction, such as charging excessive amounts for charging cell phones, sale of fruit and water outside the temporary accommodation sites, transport by taxi or private car for a fee, etc. At the same time, there were reactions by part of the local community mainly for the

installation and, sometimes, even for the removal of accommodation facilities from areas of the islands and the mainland. A typical example is that of Eidomeni, where local farmers complained about adverse consequences on their crops from the creation of the unofficial camp, while local entrepreneurs (restaurants, grocery stores, hotels, etc.) complained about the dramatic drop in their economic activity after the evacuation of the third-country nationals and the shutting down of the camp.

Issues of (in) security

The sudden, unplanned arrival of tens of thousands of people with special and urgent needs, and distinct characteristics, in geographically restricted spaces, such as Lesbos, Chios, Samos, Leros and Kos, put to the test the capability of response and the adaptability of the local authorities, facilities and communities. In any event, an emergency situation could not be perceived as normality. The more or less accepted tolerability of local communities who were used to live alongside "foreigners", who were mainly tourists, was quickly put to the test however, when it was found that the inadequate local accommodation facilities for refugees and migrants, and the continuing arrivals over a span of many months of large numbers of third-country nationals, were leading many of the newcomers to literally sleep and live on the street and the squares, for days or weeks, before taken to another temporary facility as an emergency solution. This seemed to confirm the suspicions of the few who were in any case predisposed against the refugees/migrants, and to create insecurity in those who initially displayed good faith. The sporadic incidents in the squares and the ports of the island capitals started to increase in frequency, and the few cases of reports of thefts or attacks were blown out of proportion and quickly spread in a population that was worried about what it perceived as an extra burden, to the one already accumulated from the financial hardships, essentially experiencing a crisis within the crisis.

The size of the problem, as it was perceived by the local community and reflected through the magnifying glass of certain local media, intensified the State's inability to foresee in time, to effectively address, to convincingly explain, and to assure the local community that the emergency has an end on the horizon and there is an efficient plan for addressing it. When for example the local police, in 2015 and for a large part of 2016 was forced to use its entire force to essentially manage the massive and unplanned arrival of third-country nationals, frequently substituting for other services, this

meant that people and means had to be taken away from other operations, such as regular policing. Moreover, the delays in organising the accommodation facilities, in combination with the extended, under problematic conditions, stay of a large number of diverse individuals, with completely different habits and needs, led to the inflation of violent behaviour phenomena, especially among the third-country nationals themselves, creating a fertile ground for the violent involvement of local bigoted individuals or groups.

The feeling of insecurity in a social system suffering anyway from an economic crisis, is easy to emerge, quick to grow, and self-fuelled in an almost organic manner. And this is particularly the case, when the State has no cohesive narrative to provide for explanations and guarantees. Moreover, the Administration's failures, such as the creation or maintenance of initially temporary and ultimately "semi-temporary" accommodation facilities, sometimes literally under the balconies and next to the stores of the permanent residents, did nothing to help in mitigating the conflicts which were erupting increasingly frequently, since no solution was anticipated for the immediate future. To the contrary, they intensified the pressures from the side of the local public opinion towards the State for immediate measures of suppression, liberty deprivation and removal initially of the "trouble-makers" and then, "preventively", of everyone. When the deficiencies in the infrastructures and the failures in the planning create a feeling of insecurity in a large part of the local community, then the calls for immediate measures will soon start to question the core of human rights and the rule of law.

Health The problematic, due to the financial crisis, situation of public health on the islands and the mainland, and the serious shortages in doctors, nurses and infrastructure, was exacerbated by the rapid increase of the demand for health services, due to the arrival of migrants/refugees. This caused a type of social engineering in the manner in which parts of the local community handled the newly arriving third-country nationals, since part of the Press and local agencies did not hesitate some times to openly adopt an intolerant rhetoric, supporting discrimination practices based on origin and nationality. At the same time, this exact effort to informally exclude these third-country nationals from the local health services, in combination with the difficult access to a hospital due to distance, gave rise to the scared or conservative parts of the local community to consider all new arrivals as a risk to

public health, despite the assurances of the experts to the contrary. It is characteristic that in 2015 in Kos, a coordinator of an international NGO of doctors was assuring a team from the Ombudsman that the third-country nationals were arriving on the island healthy and were falling ill there due to the lack of infrastructure and the inability to access adequate health services.

Education After the informal Balkan Route was closed, when it became clear that the refugees/migrants would be forced to stay in Greece much longer than a few days, we see a reaction of the local community to the effort to integrate the children of these third-country nationals into education. It is telling that, despite the choice - at least as a transitional stage - of a parallel system of educational integration,²¹⁸ that keeps the children outside the daily school operation, despite also the vaccination of these children and the extensive information that preceded, negative and xenophobic attitudes of citizens were recorded, at different decrees of intensity and gravity, focused mainly - due to the lack of any other contact of the locals with the foreign children - to the fear for the transmission of diseases.

Civil society The first contacts of the newly arriving populations, mainly to the islands, were with members of the civil society and the so-called NGOs. Individuals and groups were involved and continue to be dynamically involved, both during the entry stage (rescue, first aid, clothing, food, health care), and in the next stages (meeting the needs and shortages in relation to food and clothing, access to health services, legal representation, accommodation, etc.). Arrival and stay on the islands, as well as areas of the mainland, of volunteers from many different countries had a mainly positive impact on the local community and its members. Such examples are the initiatives of unaccompanied minor facilities to reach out to the local communities, the joint actions and participation in events for familiarisation with the culture and strengthening of the ties (e.g. participation of children in island festivals with hand-made delicacies of their country of origin, which they offered to the public accompanied with a written message, invitation of the neighbourhood residents by minors in a facility to a meal prepared by the children themselves, painting by children on a neighbourhood street with the consent of the residents, organisation of friendly sports games with participation of children from facilities).

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4.4 Ombudsman's Recommendations

Based on the previous findings, the Ombudsman focuses, among other things, on the need for:

A. More systematic planning by the central government, with focus on ensuring the conditions that prevent negative phenomena, e.g.

- assurance of adequate and quality provision of food,
- selection of suppliers of related services from the local economy by priority,
- review of the geographical distribution of the populations,
- rapid transition from the current accommodation model in more or less ghetto-like facilities to the accommodation model in residences/apartments, in order to facilitate integration in the local community,
- support of the financial initiatives of private citizens with the employment of a percentage of residents and refugee populations, in order to achieve a gradual familiarisation, and the economic independence of the remaining third-country nationals,

From the local government's side, similar actions should be taken, e.g. employment of people from the local community in each case in positions related to the management of the refugee phenomenon.

B. Reinforcement of the interconnection with the local communities, in conditions far different from those experienced by all involved parties in the past which had an emergency character. Best practices could be utilised in this direction, such as those presented above, or others related to the development of collaborations and joint actions (e.g. joint art exhibitions, joint participation in environmental actions for improving the area).

C. Promotion of the social integration of those who want it and meet the requirements, by creating the appropriate conditions, from the aspect of institutional framework and infrastructure, e.g.:

- third-country nationals remaining in the country obtaining a Social Security Number (AMKA) or

- completion of the procedures for activating the provision on the Third-country National Health Care Card,
- promotion of employment integration with potential use of EU funds.

D. Developments
during 1st
quarter of 2017



D. Developments during 1st quarter of 2017

Until the completion of this report (March 2017), there were critical developments in key parameters that compose the picture of the refugee-migrant crisis during the 2015-2016 period. This chapter refers to the developments of the first quarter of 2017, which change, in a positive or negative direction, the situation or confirm the conclusions of the previous chapters, in order to record and assess the issue in a spherical manner.

1. Unaccompanied minors

There were no significant changes noted in the first three months of 2017 regarding the treatment of unaccompanied minors. The major problems, pertaining mainly to the verification of minority, the detention conditions and the lack of a legislative framework for the guardianship of unaccompanied minors appear to remain open.

In particular, regarding the issue of verification of age, up to this day, unfortunately²¹⁹ minors continue to be discovered among the population of adult detainees. The legislative framework for guardianship has yet to be adopted, despite the existence of a draft law by the co-competent ministries.

At the onset of 2017, a safe zone was put into operation within the Open Temporary Accommodation Facility in Elaionas, Attica, with the prospect of more such spaces.

Also, towards the closing of 2016, and during the first month of 2017, the EHPA of Amygdaleza for minors was shut down. Minors were transferred to shelters of the 2nd Sector of the Detention Center (PROKEKA) of Amygdaleza, where they remain under protective custody until their placement in accommodation facilities.

2. Asylum applications

With decision No. 445/2017, the Supreme Administrative

Court (Conseil d'Etat) rejected the application of the first, after the entry into force of the EU-Turkey Statement of 18.3.2016, Syrian appellant from Lesvos against the rejection of his asylum application as inadmissible. The Court stated that the law adopts the criteria of Directive 2013/32/EU (Article 38) on the concept of safe third country for the examination of asylum applications. It also finds that the change in the composition of the three-member Appeals Committees against rejections of asylum applications with the participation of two administrative judges does not oppose the Constitution, which prohibits the assignment of administrative duties to active judges. The Court decided in favour of the quasi-judicial function of the Appeals Committees, which complies with the mandate of the Directive (Article 46) for the right to an effective remedy before a court or tribunal. The decision refers to the Plenary Session of the Supreme Administrative Court due to the major importance of the relevant issues. At an administrative level however, this development is expected to significantly affect the progress of many other decisions of the Appeals Committees, as mentioned by the European Commission,²²⁰ noting the slow pace of decision-making (rejections at a ratio of 150 to 1) up to December 2016.

3. Returns of third-country nationals

The new EU Regulation 2016/1624 on the conversion of FRONTEX into a European Border and Coast Guard²²¹ implements as of 7.1.2017 a European pool of monitors to which Member States contribute for each European operation for the return of third-country nationals. The Greek Ombudsman, as a national mechanism for the external monitoring of returns already participates with 8 members in this pool. Also, FRONTEX addressed the Ombudsman as a national mechanism for the protection of rights, activating the provision of the Regulation (Article 72(4)) on the complaints handling mechanism.

As of 2017, the new role and increased competences of FRONTEX, in general present new challenges for the external monitoring of returns/readmissions, which the Greek Ombudsman is called upon to handle in an institutional cooperation with every competent agency at

²¹⁹ The Greek Ombudsman received reports No. 223632/2017 and 223926/2017 from the Greek Council for Refugees NGO, regarding cases of administratively detained minors, who, despite having declared that they are minors, remained in detention as adults by the "Illegal immigration" Prosecution Department of N. Karvali and in the PROKEKA of Xanthi, and had not been immediately referred to the procedures for ascertaining their minority.

²²⁰ See pg. 6 https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20161208-4th_report_on_the_progress_made_in_the_implementation_of_the_eu-turkey_statement_en_O.pdf

²²¹ <http://data.consilium.europa.eu/doc/document/PE-29-2016-INIT/el/pdf>

D. Developments during 1st quarter of 2017

both Greek and EU level.

Finally, the European Commission Recommendation of 7.3.2017 on making returns more effective,²²² creates a new landscape for the implementation of substantial and procedural safeguards in practice and the Ombudsman will closely monitor the implementation of the national policies at each stage of the process, in order to protect the fundamental rights of the involved third-country nationals.

4. Housing

The living conditions in the temporary accommodation facilities and the hotspots have improved in 2017, especially following the bad weather conditions of the winter of 2016-2017, which were an opportunity for highlighting the inadequacy or unsuitability of many installations, often with tragic consequences for the people living there.

The positive developments include the evacuation of particularly problematic accommodation sites, the replacement of most tents with stable constructions and the decrease of the population staying in mass accommodation sites, with the movement of mainly vulnerable groups to other forms of housing (apartments, hotels, etc.). The accommodation program of the UNHCR, in cooperation with NGOs and municipalities has provided 19,139²²³ accommodation places in apartments, hotels, buildings, as well as hospitality by families. This fact is especially positive, since beyond the good accommodation conditions, this form of accommodation fosters social integration.

However, there are still significant shortages in material and technical infrastructure in many mass accommodation sites. In particular, an unspecified number of people²²⁴ is still living in tents (Samos, Souda in Chios), whereas the essential amenities, such as heating, electricity and sanitary facilities are not always ensured (e.g. Chios (VIAL), Polykastro in Kilikis, etc.). Also, accommodation sites are still in operation in old industrial buildings, which pose risks for the health of the residents (e.g. Kalohori in Thessaloniki, Oinofyta in Viotia, etc.).

²²² https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170302_commission_recommendation_on_making_returns_more_effective_en.pdf

²²³ UNHCR data as of 28.3.2017.

²²⁴ Despite the Ombudsman's relevant investigation, it could not obtain any official information regarding the exact number of people living in tents.

Finally, the official establishment of the Reception and Accommodation Facilities and the issue of their General Rules of Operation are still pending.

5. Health

The initial investigation of the Ombudsman on the tragic incident of the death of a detainee suffering from hepatitis at the Pre-removal Center of Tavros on 6.2.2017, confirmed the fact that the examination and filling-in of the health card is not done immediately for all new arrivals at the Detention Center, considering that it is supported by only one doctor of the Hellenic Center for Disease Control & Prevention, 5 days a week during working hours. The Ombudsman observes that the findings of the Council of Europe Committee for the Prevention of Torture still apply today regarding the lack of an integrated approach in the provision of health services to the detainees during its visit in 2015 at the Tavros Detention Center on P. Ralli Str.²²⁵ Thus, the Ombudsman's recommendation for the immediate care and systematic monitoring of the health of all administratively detained third-country nationals, as stipulated by the relevant regulatory provisions is still valid (see Chapter B3).

6. Education

A more general observation regarding the picture presented in early 2017, is that the Ministry of Education continues to make efforts to assure the right to education of the children from third countries, without however having covered the gaps or addressed many of the procedural problems that emerge. Specifically:

6.1. Operation of DYEPs In early 2017, there were approximately half of the stipulated DYEPs in operation, and operational and other problems that had initially emerged had been addressed,²²⁶ whereas an elementary expertise in the field had been acquired, a fact that contributed to a gradually improving operation of the DYEP programme.

²²⁵ [http://hudoc.cpt.coe.int/eng#{"CPTState":\["GRC"\],"CPTSectionID":\["p-grc-20150414-en-26"\]}](http://hudoc.cpt.coe.int/eng#{) report about the visit in 2015 to Greece, published in July 2016, see D. 117.

²²⁶ We indicatively mention problems of negative reactions by the benefited populations and leaks, issues related to health and safety, difficulties that emerged during the transportation of the children to the DYEPs with vehicles, problems due to the wrong initial declaration of the child's age resulting in including it in the wrong grade, etc.

Despite these positive developments, there was still a complete absence of DYEPs for kindergarten and senior high school (Lyceum) up to February 2017, resulting in the complete exclusion of these age groups from the educational system.

As regards the situation on the islands, which reasonably attract the most interest due to the high concentration of refugee/migrant populations, the Ombudsman confirmed that during the first quarter of 2017 no DYEPs had operated, despite the fact that Refugee Education Coordinators had been appointed by the Ministry of Education in Lesbos, Samos and Chios. The fact was attributed to the lack of a relevant order by the Ministry of Migration Policy.²²⁷ The reasons for this gap, in facilities where children of all ages stay for long periods of time (accompanied or no), appear to pertain mostly to political choices, due to the temporary nature, officially, of the stay in the Reception and Identification Centers and the open accommodation facilities, the possibility of integration into school serving as a basis to legalise non-removal from the country, the concern regarding the creation of tensions in the local communities, etc.

The issue of the certification of the level of education for the children that attended or attend the DYEP programme until February 2017 was at the processing stage by the Experts Committee, a fact that contributes without doubt to the preservation of the insecurity, as well as the questions regarding the practical value of completing the year for the children that attend. The granting of certificates to the children that stopped attending the DYEPs because they left Greece, was not standardised and systematic, but an exceptional procedure followed in isolated cases.

6.2. Attendance of regular school curriculum

During the first quarter of 2017, the difficulties identified by the Ombudsman due to the absence of reception classes in the junior and senior high

schools (gymnasium and lyceum) of the country continue to exist, resulting in many cases in the exclusion of the corresponding age group (13-18) from school.

Moreover, especially in certain urban areas of the country, such as the Municipality of Athens, we find also during 2017 an accumulation of pending applications at the Education Directorates for long periods of time, until the enrolment

school is specified, which means that the children remain without any form of educational integration when the school year is about to end. A similar wait or inability of enrolment due to lack of capacity has also been reported for enrolment in kindergarten in the same areas.

We should however also mention good practices in the findings of 2017, such as the creation of a class (in the form of an informal reception class), in early February 2017, in the evening high school of Mytilini, where 11 children were enrolled.²²⁸

7. Administrative detention

During 2017, the systematic detention of third country nationals for return in police stations outside the Pre-removal Centers that was discovered the past two years, was confirmed, despite the relevant commitments and efforts made by the Hellenic Police.²²⁹ The police stations are inappropriate for any stay lasting over a number of days, or even months, since they do not ensure decent living conditions and basic rights for the detainees, such as open-air exercise.

The implementation of the European Commission Recommendation of 7.3.2017 on making returns more effective,²³⁰ also creates a new field for the expansion of the administrative detention practices. It typically provides for the obligation of the Member States to bring detention capacity in line with actual needs, including by using where necessary the derogation for emergency situations as provided for in Article 18 of the Return Directive (point 10(c) of the Recommendation). Also, there is provision for the obligation of the Member States not to preclude in their national legislation the possibility to place minors in detention, where this is strictly necessary to ensure the execution of a final return decision insofar as Member States are not able to

²²⁸ This practice was recorded by the Ombudsman in the framework of the on-site inspection of 10-13 February 2017, which it carried out in Lesbos and it was included in the Authority's document with ref. No. 1500.2/8335/22-2-2017 to the Ministry of Education, on the subject of the access of the children refugees to education in Lesbos.

²²⁹ For example, during the Ombudsman's on-site inspections, it was found that on 26.1.2017, in addition to the 182 adult men detained at the Pre-removal Center of Tavros, there were 124 detainees in other police station cells of the Aliens' Police Division of Attica. Also, on 7.2.2017, at the Aliens' Police Division of Thessaloniki, there were 131 adult men held in total, 96 people at the central cells of the Division, deprived of any possibility for open-air exercise, as well as 35 in other police stations.

²³⁰ https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170302_commission_recommendation_on_making_returns_more_effective_en.pdf

²²⁷ Document of reply No. 292/14-2-2017 of the Ministry of Education to the Greek Ombudsman.

D. Developments during 1st quarter of 2017

ensure less coercive measures (point 14) etc. The Council of Europe Commissioner for Human Rights expressed the reasons for his concern for the expansion of detention in Europe under this Recommendation.²³¹

The expansion of administrative detention in the East-Aegean islands is a fact at the onset of 2017. The establishment of the first Pre-removal Center in Kos was published on 7.2.2017 (Government Gazette B 322) and the Ministry of Interior - Citizen Protection Department proceeded with the auctioning of its construction.

²³¹ <http://www.coe.int/en/web/commissioner/-/europe-s-duty-to-avoid-detaining-migrants>



Souda, Chios, 2017

E. Conclusions -
Findings -
Recommendations



E. Conclusions - Findings - Recommendations

1. Limited use of funding - Lack of coordination - Diffusion of responsibilities

1.1. General comments Except perhaps for the involved state services, all other agencies working on the management of the issue, as well as the Greek Ombudsman, find

that what is missing is an authority which will both coordinate and monitor, and to a certain extent, make the decisions. The following observations were made during the on-site inspections of the independent authority at the Reception and Identification Centers (hotspots) and in accommodation facilities: a) Low level of expertise in many involved agencies, and especially their heads with regard to their subject matter. In many cases this became more prominent by their frequent change; b) Zero control and accountability regarding the progress in each unit (e.g. open accommodation centers) and possibly lack of planning;²³² c) Exceptionally low capability of response and adaptation to the changing circumstances.

Coordination at a central or regional level continues to be a first priority and the coordination and management of each unit or each action/intervention a second one. In practice, despite the attempts by many involved parties to coordinate at a local level, the capabilities for the effective handling both of the daily problems, as well as the planning - even if short-term - were usually limited. This was because there was no institutional framework to describe the methods of their cooperation, to define who has decision-making power and the monitoring mechanism.

1.2. The issue of funding Lack of funding was one of the problems which the Greek authorities invoked. However, in contrast to the Greek government, the European Union and the European Commission claim immediate and adequate

supply of funds for the management of the flows from the spring of 2015 and up to this day.

The developments that led to the funding deficit are particularly interesting, and we therefore present them below in detail: The now single Asylum Migration Integration Fund (AMIF), competent also for the funding of pre-removal centers and the returns of third-country nationals, could have supplied the relevant funds approved in the summer of 2015 by the European Commission for the 2014-2020 national programme. However, the merger of ministries, with the creation of a “super-ministry” of Interior in January 2015 was followed by the creation of an independent service as a single managing body in the Ministry of Interior in July 2015 headed by a Special Secretary.²³³ The consequent regulatory acts authorised by this law were then issued, followed by the procedures for the staffing and certification of the managing authority. Law 4375/2016 (Articles 75, 76 et seq.) established in the Ministry of Finance a Special Secretariat for the Coordination and Management of Programmes. The independent service (now the “Special Service for Coordination and Management [...]”) was transferred from the Ministry of Interior to the Ministry of Finance, as the authority responsible for the national programmes and was included under the newly established Special Secretariat. Various regulatory acts and the amendment of the legislation followed three months later, in July 2016,²³⁴ with which part of the competences of the responsible authority with relation to the preparation and submission of the payment requests, was transferred to the Special Service responsible for the NSRF.²³⁵ In December the European Commission advocated the need for its full activation.²³⁶

A typical example of the consequences of these regulations and changes are the Pre-removal Centers (Detention Centers) for third-country nationals. A catalytic role in the bad living conditions and the lack of essential services in the Detention Centers was held by the lack of stable funding, both for the Detention Centers and also the return operations of individuals in detention. Detention was an

²³² The changes in the number of the flows and the constant movements may make planning harder but not impossible, because they ultimately have to be taken into consideration during the planning.

²³³ Article 9, par. 6 et seq. of Law 4332/2015.

²³⁴ Article 65(1) of Law 4403/2016.

²³⁵ Special Service “Certification and Verification Authority of the Co-financed Programmes” of the General Secretariat for Public Investments and NSRF.

²³⁶ https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20161208-4th_report_on_the_progress_made_in_the_implementation_of_the_eu-turkey_statement_en_O.pdf

E. Conclusions - Findings - Recommendations

area where the lack of funding was due to the administrative inadequacy and tardiness we described above, which resulted in the failure to use the relevant amounts of the regular programme and in having a funding gap since 1.7.2015, extending throughout 2016. The gap was covered with successive temporary allocations from the state budget.²³⁷ By the end of 2016, the designated managing authority of the Ministry of Interior - Department of Citizen Protection issued the amending decision dated 17.10.2016²³⁸ for the funding from the AMIF of the action for the facilities and the functionality of the Detention Centers.

The funding issue, based on the Greek Ombudsman's experience must be examined from three aspects:

- Absorption of available funds (outside of state budget)
- Their suitable and optimum use
- Transparency and accountability

Although one could justify for 2015, due to the largely unpredictable and urgent needs, significant deviations from a planned, rational and transparent procedure related to the financing and availability of the money, the same does not apply for the period from 2016 to this day.

By reviewing each aspect, we make the following observations, conclusions and recommendations:

Fund absorption According to the figures of the European Commission, Greece has received or will receive particularly high amounts related to the management of the refugee/migrant issue. A large part of this money relates to the living conditions of those remaining in the country either directly (food, shelter, medical and pharmaceutical care) or indirectly (Asylum, RICs). Part of this money is given as emergency funding and other means from regular funding procedures. Even though part of this money is available to international organisations, such as the UNHCR, or NGOs, a large part was channelled from 2015 and up to this day to the Greek authorities.²³⁹

²³⁷ Government Gazette B 1287/29-6-2015, further to the JMD published in Government Gazette B 118/21-1-2015.

²³⁸ http://www.mopocp.gov.gr/images/stories//2016/prokirikseis16/17102016-apofasi_amif.pdf

²³⁹ For the allocation between state agencies, as well as NGOs, see <https://>

Despite the particularly increased financing, the country could not absorb a significant part of the non-extraordinary funding. The most typical example of this failure is the programmed funding from the EU-AMIF for 2016, amounting to approximately 86.5 million euros, out of which only 1.9 million were absorbed.²⁴⁰ This of course is in direct contrast to the Internal Security Fund (ISF), which absorbed the greatest part of the funding.²⁴¹ The inadequate absorption in 2015 and 2016 constituted one of the fundamental issues related to the living conditions of the refugee/migrant population, which is ultimately attributed to weaknesses of the state mechanism. Despite the fact that the well-known weaknesses and confines of the Greek Administration run through all life areas of anyone living in the country, in this case an additional weakness emerges: The inability of an immediate, or even slightly delayed, response to emergencies, to a change of circumstances and to new situations. In this sense, the weakness that emerged does not pertain only to the involved agencies for the management of the specific population, but the overall Greek Administration, and consequently, the country's entire population.

Appropriate and optimum use of the funds

The Greek Ombudsman does not have adequate information available, allowing a global view and evaluation of the method of the disposal, allocation and use of the funding. It therefore reserves the right to revisit the issue, if needed, after a special investigation. Nevertheless, from its involvement with the issue from the start and its ongoing monitoring, important issues were ascertained, which if nothing else, are directly related with the failure of coordination, the diffusion of responsibilities and the lack of a special framework for decision-making and accountability. Shortcomings and a fragmentary manner in the allocation of the funds may be easily observed, and potentially even justified in some cases, also at the first stages. However, a

ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/20161208/factsheet_managing_refugee_crisis_eu_financial_support_greece_-_update_en.pdf. For all available funds, see https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20161208-4th_report_on_the_progress_made_in_the_implementation_of_the_eu-turkey_statement_en_O.pdf, pg. 8.

²⁴⁰ See in detail: <http://www.amifsf.gr/pdfs/%CE%95%CF%84%CE%AE%CF%83%CE%B9%CE%B1%20%CE%88%CE%BA%CE%B8%CE%B5%CF%83%CE%B7%20%CE%95%CE%A0%20%CE%A4%CE%91%CE%9C%CE%95%202016.pdf>

²⁴¹ <http://www.amifsf.gr/pdfs/%CE%95%CF%84%CE%AE%CF%83%CE%B9%CE%B1%20%CE%88%CE%BA%CE%B8%CE%B5%CF%83%CE%B7%20%CE%95%CE%A0%20%CE%A4%CE%95%CE%91%202016.pdf>

key element of the weakness was the lack of planning and sustainability of the actions. In the chapter on accommodation (B1) and, to a lesser extent, provision of food (B2), which present the situation in detail, there are examples of the failures that occurred and are still occurring with the allocation of the funds. Moreover, there are indications from on-site inspections carried out by the Ombudsman, that the choices made at places were not always the most rational as regards the most effective way to address the needs of the refugees and migrants. If we can understand an inability in 2015 of the state mechanisms to plan, allocate and use in the best possible way the funds they had available, this does not apply for 2016, and certainly not the present year.

Transparency and accountability Up to this day there is no, at least apparent, single, consistent, detailed statement of the funds made available both by EU and international bodies, and the Greek Administration, for the management of the entry and stay of those refugees/migrants who entered from spring 2015 onwards. With the exception of the Ministry of National Defence, no other ministry or state agency has made public comprehensive data in a uniform, consistent and detailed manner, which facilitates their processing and control. Even though such announcements are not so rarely made the subject of political confrontations or easy out-of-hand criticism, in modern European democracies such types of “reactions” are acceptable. In any event, the risk remains to this day, that the complaints and conjectures at times of mismanagement are consolidated in the minds of the public and attributed to the political system, without a previous serious and documented debate, that could potentially lead to completely different conclusions. To avoid this, all information, which the competent authorities must in fact have in a usable form, must be available, not only for their control, but also for receiving criticism.²⁴² This does not pertain only to the most directly involved service (the Ministry of Migration Policy), but also other ministries, agencies of the local and regional government and each agency or authority related or dependent on the State (for example the Hellenic Center for Disease Control & Prevention). The assurance of transparency in issues of economic management of such a type, beyond being a quality characteristic of our democracy, also helps everyone in the better management and ultimately the recipients of the funds themselves.

²⁴² In fact, the failure to publish data may be perceived as inability to collect them, a fact that is particularly serious, especially when related to high costs, such as those of the health system.

1.3. Issues of coordination and competences that require immediate resolution

Coordinators/directors in the Reception and Identification Centers (RICs)

After the EU-Turkey Statement of 18 March 2016, coordinator positions opened for the RICs of the 5 islands.²⁴³ Law 4375/2016 provides for their appointment as staff of the Reception and Identification Service of the General Secretariat for Reception, established with the same law, under which the RICs were administratively subjected, as regional services. However, for 10 months the staff of the First Reception from Athens²⁴⁴ changed every month as head of the RICs on rotation, with consequent gaps in the coordination of the operation and the institutional cohesion and common understanding with the local authorities (Hellenic Police, army, Asylum Offices, municipalities, etc.). The European Commission noted in December 2016 “... *their appointment has been repeatedly communicated in the past six months as imminent*”.²⁴⁵ Finally, the directors of the five RICs were announced in February 2017.

What remains a serious issue in any case is the reinforcement of the RICs with permanent staff, which at this time is very small, and their needs are covered in their most part by contract staff.

At the level of the Ministry of Migration Policy, it should be noted that the time gaps in the delegation of responsibilities to the initially appointed General Secretary for Reception and also to his successor - as well as delays in the organisation of the General Secretariat for Reception that was provided for on 4.4.2016 by Law 4375/2016 were inhibitory factors in the smooth functioning of the competences related to the ministry. Moreover, the reorganisation of the ministry services presented the same weaknesses (e.g. need for provision of a General Directorate of Financial Services, etc.), which had not been completed in 2016 as a result of its split as an independent ministry from the Ministry of Interior, in November 2016.

²⁴³ According to the draft for consultation they were initially to be appointed by the Minister of State.

²⁴⁴ Except for the RIC of Moria, which has the same temporary coordinator from the side of the First Reception service.

²⁴⁵ https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20161208/4th_report_on_the_progress_made_in_the_implementation_of_the_eu-turkey_statement_en.pdf see pg. 7.

E. Conclusions - Findings - Recommendations

The Ombudsman noted that each public policy needs, in addition to a specific operational implementation plan, officials implementing it at each administration level, from the head of the services at the level of revocable general secretary to the practitioner in the field (in this case, at the RICs). The intermediate administration levels, such as services of the ministry that provide guidelines and coordinate the RICs, are extremely crucial for the effective implementation of any policy.

The level of administrative coordination and organisation after the explosion of the mixed flows in 2015 and the critical last nine months of 2016 after the EU-Turkey Statement, cannot be considered to have met the demands of the reception of refugees and migrants. The Ombudsman puts forward the need for the organisation of central and regional migration policy services (staffing with permanent and adequate personnel, specific operation instructions, duties and targets), without of course negating the possibility of a flexible scheme which will be related to the increase or decrease of the flows and/or their geographical shift.

Competences and coordination in the open facilities

The clarification not only of the competences of each agency in the temporary accommodation sites across the country (Ministries of National Defence and Migration Policy, UN, NGOs, Police), as well its establishment, in parallel to the few common specifications (housing, medical and other services, etc.) in each site is still a priority, one year after the closing of the borders. The Ministry of National Defence underlines that it is not responsible for the temporary accommodation sites, bearing in mind that its legal competence for the operation of the temporary accommodation sites (Law 4368/2016, Article 96(1)) pertains “exclusively” to the transport, accommodation, food and health care of the hosted refugees and migrants at these temporary sites²⁴⁶ and that their creation and appointment of their administration is the responsibility of the Ministry of Migration Policy. From the Ombudsman’s consecutive visits to temporary accommodation sites across the country, the conclusion is that each agency performs (at best) its proportion of the work, without however an overall coordination with adequate on-site staff by the competent ministry or in any case without having someone who is responsible for the

coordination and decision making. In short, what is missing is a sense of “ownership” and an overall administration, with a specific plan for each site and common specifications for services.

1.4. Specific issues of shortcomings, coordination, competences and funding

Unaccompanied Minors

The effective protection of unaccompanied minors cannot be realised without the prior implementation of a reliable system for their identification, registration and supervision through the guardianship institution, rendering now necessary the establishment of the relevant framework. The seamless and safe operation of the facilities where the unaccompanied minors are living, both inside the safe zones and in the other areas, is an imperative requirement. Therefore, the issue of internal rules of operation of these facilities is an immediate priority, in order to have a uniform treatment to meet the specific needs of the minor. Finally, it is also recommended to limit the time of stay in safe zones and to transport the minors to appropriate facilities, as imposed by the child’s best interest, which is a legislative guide of a broader range for decisions related to minors.

Educational integration

The lack of coordination between services of the co-competent ministries, and often within the same ministry, is apparent also in the field of the educational integration of the refugee populations. This dysfunction often results in serious delays in the implementation of the programming, e.g. the transfer of teachers to other positions after their appointment to DYEPs, resulting in gaps, delay in the start of the operation of kindergartens, vagueness and sometimes contradicting instructions to the educational system structures. Frequently, the instructions are different or even conflicting, depending on the Directorate of the ministry that provides them (e.g. as regards the conditions and the method for the enrolment of the third-country nationals in school, the obligation for the enrolment of children above 15 years old).²⁴⁷ We further note the shortages observed in relation to the planning and implementation of the sustainability of the

²⁴⁶ 32 facilities with the direct contribution of the armed forces.

²⁴⁷ The Ombudsman had found in practice that in certain cases, depending on the service and/or the competent department of the Ministry of Education, wherever a question was submitted regarding the enrolment or attendance of the children from third countries in the educational system, a different reply was given, due to the different approach of the issue (e.g. difference of opinion between the Directorate of the Ministry of Education that handles student issues in general and the Team for the Management, Coordination and Monitoring and Education of the Refugees of the same ministry).

educational programmes (especially the lack of provisions for their consistent attendance and the leak of students, the groups on the move, etc.).

Funding of the Detention Centers

The Greek Ombudsman considers an imperative need the stable flow of financing for the Pre-removal Centers from the regular funds of the relevant European fund with the required completion of the relevant internal procedures of the Administration and the central managing authority. The detention conditions in the Pre-removal Centers, at least in some of them, must change immediately. Under the weight of the rapid developments, the spotlight of the media and the criticism turned towards other areas of the management of the refugee/migrant issue, leaving the Pre-removal Centers, at least for now, in the shadows. A modern state governed by the rule of law must however manage rights issues regardless of the constantly changing media coverage or criticism.

1.5. Concluding remarks The lack of central planning and coordination of the involved agencies and services, in combination with the failure of the immediate and appropriate use of the EU and domestic funds are key reasons for the failure of the State to ensure the fundamental living conditions in all temporary reception and accommodation sites and in the hotspots.

The diffusion and overlap of competences, on one hand between the services of the Ministry of Migration Policy itself, and on the other between this ministry and the other involved public agencies and services, international organisations, NGOs, etc., on the subject of meeting the subsistence needs of the refugees and migrants, creates obstacles in the effective and immediate handling of the problems and makes accountability impossible. Despite the over-production of regulations, there is still an absence of institutional arrangement in areas where it is much needed, such as the way of operation and the (re)distribution of competences and coordination in the open accommodation facilities or wherever there is more than one agencies operating in the same site (for example in Moria). The solutions must be flexible in order to adjust to the changes in the conditions (increase-decrease of the flows, changes in the profile of the arrivals, etc.), but also to lay down rules and methods for controlling their implementation.

The General Secretariat for Reception of the Ministry of

Migration Policy has not been able to date to fulfil its role as a central coordinating and supervisory mechanism for the management of the population that continues to live in the accommodation facilities. The better coordination of the services and agencies that operate in the accommodation facilities and the effective supervision of their operation by the General Secretariat for Reception, must be a top priority for Administration.

Moreover, the funding of state agencies and humanitarian organisations by the European Union did not manage to ensure the fundamental living conditions of all the refugees and migrants staying in the country, despite the establishment of services for the absorption and use of the funds available for this purpose. The acceleration of the procedures for the better absorption of the European and national funds, intended for the accommodation of the refugees and migrants residing in the country, must take place immediately. This however must not be to the detriment of the proper management of the funds in order to finance specific needs, or their transparent and published use, making them open to control and criticism.

2. Regulatory framework, shortcomings and deviations in the implementation

The way in which the migration/refugee phenomenon was handled at the regulatory level, had **two main characteristics**: a) lack of clear rules and implementation criteria and b) distance between the provision and the implementation of the legislation.

2.1. The lack of clear rules

Usually, the lack of clear rules is a result of a multitude of provisions, resulting in an inversely proportional relationship between quality and quantity of the legislative regulations.

The provisions of the law, mainly after the EU-Turkey Statement (Law 4375/2016) pertained to multiple facilities for refugees and migrants, which meant that they were never implemented in practice, as mentioned below. Also, the EU-Turkey Statement has as its main assumption a framework for the fast implementation of readmission for those who do not lodge an asylum application or for those whose relevant application has been dismissed in a final judgement, a framework which was not provided for

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in the legislation with fast-track reception procedures²⁴⁸ and specific deadlines for deportation decisions based on readmission, appeal against those decisions, etc. There was provision only for the asylum process at the first and second instance, especially for the hotspots (Article 60 of Law 4375/2016). The deportation decisions based on readmission were finalised with a circular of the Hellenic Police in July 2016.²⁴⁹

However, even where there were special legislative provisions, as for example in the review of asylum applications, it should be noted that they did not remain constant: the provisions for the Appeals Authority were amended already twice in 2016, in April and June, and a new amendment is expected.²⁵⁰

Even more problematic for legal certainty is the fact that the competence for deciding an appeal against an asylum decision at the 1st instance is distinguished into 4 different categories provided for by usually transitional provisions.²⁵¹

The constant legislation of extraordinary procedures for direct award due to emergency, as well as the special spatial planning and property designation procedures, with more recent example the amendment on 9.3.2017 on the facilities for minors by the Ministry of National Defence, are a regression from issues of transparency of public tenders and procurements.²⁵²

The lack of clear rules is identified mainly in areas where these rules are needed the most: in the provisions for guardianship of unaccompanied minors, the specifications for the various welfare structures and the clear rules of

operation of the open or closed facilities.

The halting throughout 2016 and up to this day of the draft law for the guardianship of unaccompanied minors deprives them of a basic institutional guarantee for the protection of their rights. The minors' representation, as well as the management of their daily problems, are impossible without such as person, who, considering the particular circumstances, is essentially exercising their guardianship. Significant rights in the minors' lives, such as access to education and health, as well as general issues of their social inclusion, become a dead letter without substantial guardianship.

As regards the lack of rules for closed or open facilities:

- The Detention Centers were operating in 2014 as Identification Centers, a category outside the legislative authorisation (Law 3907/2011), before the establishment, as provided for by law, of Pre-removal Centers with JMD of 21-1-2015 (B 118), which also includes the Rules of their Operation. At the hotspots (Reception and Identification Centers of the islands), which have crucial importance both for the endeavour of the EU-Turkey Statement, and for the rights of the involved parties, the clear determination of the standard operating procedures is still a basic shortcoming. **The Ombudsman recommends**²⁵³ the immediate issue of internal rules for the operation of the hotspots.
- The temporary accommodation sites for refugees-migrants are operating in practice without implementation of the framework of Law 4375/2016. Nearly a year after the provision for Facilities of a) Temporary accommodation and b) Temporary Reception with Law 4375/2016 (Article 10), we see a piecemeal approach to the implementation of the provisions pertaining to the facilities, the majority of which were still operating unofficially until the beginning of 2017, and without meeting the formal and essential requirements of the applicable laws. Indicatively, the issue of a JMD is pending for the establishment of the open Temporary Reception and Temporary Accommodation Facilities, the establishment of General Rules for the Operation of the Facilities, the issue of Internal Rules of Operation for each one of them, as well as the specialisation of the terms

²⁴⁸ See Article 14(2) of Law 4375/2016 that provides for the completion within 25 days of the first reception procedures at the hotspots, in comparison to the overall time of also 25 days (initially 15 and extension of another 10) of Article 11(5) of Law 3907/2011.

²⁴⁹ <https://www.synigoros.gr/?i=foreigner.el.metanastis-egkyklloi.379856>

²⁵⁰ According to Article 4 of Law 4375/2016, which replaces the repealed Article 3 of law 3907/2011 (repeal of the entire chapter A of Law 3907/2011 with Article 81 of Law 4375/2016). Subsequently, with Article 86 of Law 4399/2016, that was introduced with an amendment (Art. 496/25) and brought about, inter alia, a change in the composition of the Appeals Committees (see Chapter D.2 above). With Article 86(3) of Law 4399/2016 the submission of reports by the Appeals Authority to the Greek Ombudsman was also repealed (Article 4(3) of Law 4375/2016) for the monitoring of the procedures followed. A late amendment again for the Appeals Authority was submitted to the Parliament on 13.3.2017 <http://www.hellenicparliament.gr/UserFiles/bbb19498-1ec8-431f-82e6-023bb91713a9/9969803.pdf>

²⁵¹ See Article 81(27) of Law 4375/2016, Article 86(27) of Law 4332/2016.

²⁵² <http://www.hellenicparliament.gr/UserFiles/bbb19498-1ec8-431f-82e6-023bb91713a9/9966464.pdf>

²⁵³ And so does the European Commission.

for the operation of civil society organisations in the Facilities and their certification.

- Beyond the legal issues raised by the informal operation of these facilities and the failure to issue the regulatory acts required for their establishment and operation,²⁵⁴ this pending issue is the main reason for the creation of organisational dysfunctions, due to the lack of effective coordination of the involved agencies and the inability to monitor and attribute liability in cases where serious omissions are discovered. The Ombudsman further recommends: a) The official establishment of all accommodation facilities and the issue of the stipulated General Rules of Operation and the Internal Rules; b) the completion of the preparation of a Registry of accredited agencies by the Directorate for Reception of the General Secretariat for Reception and its appropriate use.

2.2. The deviation between provision and implementation of the rules

This deviation is not of course a characteristic only of the migration legislation, but it entails in this case onerous restrictions of the rights of the irregular migrants and asylum applicants.

The most characteristic example over time is that the **first reception procedures are not implemented** with all new arrivals to the islands, contrary to the mandates of Law 3907/2011.²⁵⁵ The practical result of this was that vulnerable individuals (minors, etc.) ended up in Pre-removal Centers, whereas their detention, at least up to now, is prohibited. As mentioned above, the medical examination card of each new arrival is still a goal at the hotspots, despite the provisions of Law 3907/2011.

A second typical example is the way in which the legislative provision on **lodging asylum applications in person** was implemented in practice. The lodging via Skype mentioned above, caused more of an obstacle rather than the rationalisation of the access. The obligation for the lodging in person, also led to the violation of the rule of not detaining asylum applicants for more than 3 months

(Law 4375/2016), since the detention time counts from the registration of the application by the Asylum Service, for which there is a varying waiting time, and not from the applicant's statement to the police authorities that he/she wishes to lodge a relevant application. Moreover, cases of failure to register in time the intention to lodge an asylum application were also reported. In at least two cases investigated by the Ombudsman, this omission appears to have resulted in the inclusion of the applicants in readmission procedures before their asylum application was examined (in more detail, see Chapter A5.2.).

As regards the elementary rights of **administrative detainees**, a typical example of a case where the rules are not implemented is the lack of access to open-air exercise at the police station cells, with the exception of the Pre-removal Centers. However, the most important provision also in EU legislation, which is not implemented in practice, as mentioned in the relevant chapter (A5), is the due diligence for the fast-track processing **of the return** to the country of origin of the third-country national, which would reduce the detention time. As regards the return procedure itself, the timely information, at least 24 hours in advance, is a dead letter of the European Return Handbook in all return/readmission procedures.

It is also characteristic that the seamless **educational integration of the refugee populations** living in the country is still hindered by the lack of a cohesive framework. The Greek State tried, especially since early 2016, to introduce an adequate framework for the seamless educational integration of the refugee populations living in the country, taking into consideration the added needs that had emerged. The lack of prior experience, the gradual formulation of the curriculum under pressure, the difficulties that emerged and continue to emerge during its implementation, the fluidity of the population and the diverse needs, as well as the problems of coordination between the co-competent ministries or services, resulted to a great extent in the issue of a large number of legislation acts that frequently regulate the same issue, with amendments, corrections or additions. To this abundance of regulations is added a series of circulars that clarify separate issues, enhancing however the insecurity of the involved persons, with regard to the current framework. On the contrary, but for the same reasons as a rule, the regulatory framework remains incomplete in certain separate issues that are still not regulated, despite the fact that the 2016-2017 school year - when the plan for the

²⁵⁴ It is noted that the Ministry of National Defence has undertaken to take actions and enter into contracts for the establishment, construction and maintenance of the facilities, as well as specific issues of their operation (transportation, provision of food, accommodation, health care), according to Law 4368/2016, Article 96, but the decisions for the establishment of all types of facilities, the appointment of directors and their general operation belong to the competence of the Ministry of Migration Policy.

²⁵⁵ See Annual Report 2014, pg. 152 et seq.

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parallel operation of the DYEPs²⁵⁶ was implemented for the first time - is about to end (e.g. lack of explicit provision for the certification of attendance at a DYEP).

As regards EU secondary law, indicative of the failure of the Greek State to specify a framework for the implementation of general rules, is the delay in the harmonisation of the domestic law with Directive 2013/33/EU, recast 29.6.13, on the reception of applicants for international protection. Despite the fact that the transposition deadline had elapsed since 20.7.2015, and only the provisions on detention had been included in Law 4375/2016, the draft law was posted to consultation in October 2016, and had not been submitted to the Greek Parliament since then. The Ombudsman has submitted detailed comments on wording, as well as substantial comments to the competent Ministry of Migration Policy, such as:

- That there is a clear call for special care in the reception of vulnerable persons requiring international protection, with reference to the concepts of Article 10 of PD 141/2013,
- The addition of the conditions for the individual assessment and the necessity test for the implementation of any restrictions to the circulation of asylum seekers in the country,
- The transposition of all guarantees of the Directive regarding detention (separate detention of asylum seekers from other administrative detainees, their physical and mental health a primary care of those responsible, open-air exercise, etc.),
- The rewording of the possibility for the enrolment of minors in school, in order to cover the cases of difficulties in the submission of all necessary documentation and deter any practices of refusal to integrate students in school,
- Free legal assistance also to minors for the defence of their rights before the competent authorities.
- The rewording of the obligation for medical examination regarding the terms, purpose and the right of refusal of the applicant, in order not to be considered as introducing a discrimination between Greeks and third-

country nationals with regard to taking measures for the protection of their health.

- The provision for medical and pharmaceutical care to be harmonised with the wording of the Directive that provides for the unhindered access of applicants to the necessary medical care.
- Access of applicants to employment to be allowed also in cases where the completion of the application lodging procedure delays in general for reasons that are not the applicants' fault,
- The regulation for social protection to specify the relevant allowances, terms of provision, the agency and the procedure,
- The right of appeal to be made more effective, with the designation of the competent Court, any provision for an administrative appeal, etc.

Finally, it was noted that for our country's obligation to establish mechanisms for monitoring and controlling the level of the conditions of the reception of asylum seekers, and in order to inform the European Commission, it would be useful to include the Greek Ombudsman as the primary independent constitutional institution, whose competence already covers the external monitoring of the reception conditions according to the Directive.

As regards EU law, it should be noted that the surge in the migration-refugee flows caused diversions in the implementation of the regulatory framework, not only of the Greek State, but also at EU level. The main example of law by exception is the EU-Turkey Joint Statement of 18 March 2016, which is not an EU agreement with a third country, but is invoked in a series of acts: decisions for deportation due to readmission, readmission operations with the participation of FRONTEX, the decision for the appointment of a representative of the President of the European Commission in Greece for coordinating the implementation of the EU-Turkey Statement,²⁵⁷ the quarterly reports of the European Commission on the progress of its implementation, etc. The European

²⁵⁶ Reception Facilities for the Education of Refugees.

²⁵⁷ "Following the agreement reached today between the European Union and Turkey to return all new irregular migrants crossing from Turkey into the Greek islands as from 20 March 2016." http://europa.eu/rapid/press-release_IP-16-942_en.htm

Ombudsman, with her decision dated 18.1.2017,²⁵⁸ noted the need for a human rights impact assessment by the European Commission, which is responsible for the implementation of the EU-Turkey Statement, despite its political nature. However, the General Court of the EU, with its decision dated 28.2.2017,²⁵⁹ found that regardless whether the Statement is a political text with binding legal consequences, it cannot be attributed to the European Council or other EU body, but to the Heads of the Member States (par. 66-69 of the decision), and even if it were an informal agreement of the heads of state with a third country, it could not be admissibly challenged before the Court (par. 72-73 of the decision). It is worth noting that this decision of the General Court is contrary to the wording of the text of the Statement²⁶⁰ and various other texts of reports, etc. (op. cit.) of the European Commission that refer to the EU-Turkey Statement". The decision of the General Court, which recognises the existence of an extra-institutional activity of the EU regarding the refugee/migration issue, which is in fact exempted from the EU Courts judicial review, constitutes a clear indication of the fact that the refugee issue has shaken the foundations of the EU structure itself.

3. Insouciance about human rights

Even though the legislative initiatives for addressing the refugee crisis taken by Greece are not limited, their scope however is dominated by insouciance about human rights, which means lack of due respect towards human rights upon implementing the legislative framework. The example of the systematic imposition of detention, in contrast to its limited purpose by declaration as a measure necessary for the sole purpose of removal of the third-country

nationals, supports the above assumption. It is obvious however, that the legislative narrative is not sufficient for the substantial exercise of the rights, but they need to be incorporated into the daily administrative practice. The lack of such incorporation, which cancels any legislative initiative, is highlighted mainly in the subjects of detention, living conditions and the treatment of vulnerable groups, especially of minors. Specifically:

As regards detention, there is none more cynical admission of the disregard of fundamental rights than the belief that the "construction of detention facilities will serve as a deterrent to the creation of new migrant flows".²⁶¹ Thus, the deprivation of personal liberty is no longer an exceptional and necessary measure to achieve the purpose of forced removal, as imposed by domestic law and the Return Directive, but a policy instrument. The policy of the extended administrative detention had however demonstrated its limits back in 2014, when the Greek Ombudsman had noted²⁶² that administrative detention contributes towards the problem and not the solution, considering the large number of detainees held for several months, in combination with the insecurity of the third-country nationals regarding their future. The Hellenic Police does not have the facilities and the know-how to ensure adequate guarantees for the deprivation of personal liberty in mass spaces, despite its continuous efforts for improvement of the conditions at the Pre-removal Centers.

The Greek Ombudsman repeats its basic recommendation, to limit detention in view of forced removal to the absolute necessary extent as an extreme restriction of personal liberty, at the same time ensuring respect for the fundamental rights of the detainees.

Specifically, with regard to the detention of unaccompanied minors, after the adoption of Law 4375/2016, we witness the phenomenon of protective custody, that allows detention to continue even after the liberty restriction time of Articles 14 and 46(10) is exhausted, with application of the provisions on detention of Law 3386/2005, each time a suitable accommodation facility cannot be found. Even though detention with the purpose of protecting unac-

²⁵⁸ <https://www.ombudsman.europa.eu/en/cases/decision.faces/en/75160/html.bookmark>

²⁵⁹ <http://curia.europa.eu/juris/document/document.jsf?sessionId=9ea7d2dc3Od5b5ed7ddf0e624e32b8f2ec4445772ef3.e34KaxiLc3qMb40Rch0SaxyKchn0?text=&docid=188483&pageIndex=0&doclang=EN&mode=req&dir=&occ=fir&part=1&cid=503363>

²⁶⁰ "Today the Members of the European Council met with their Turkish counterpart...the EU and Turkey today decided to end the irregular migration from Turkey to the EU" <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/>, see the arguments of the European Council: "56. However, in its reply of 18 November 2016, the European Council explained that the expression 'Members of the European Council' contained in the EU-Turkey statement must be understood as a reference to the Heads of State or Government of the Member States of the European Union, since they make up the European Council. Furthermore, the reference in that statement to the fact that 'the EU and [the Republic of] Turkey' had agreed on certain additional action points is explained by the emphasis on simplification of the words used for the general public in the context of a press release. 58. According to that institution, the term 'EU' must be understood in this journalistic context as referring to the Heads of State or Government of the Member States of the European Union".

²⁶¹ According to the decision for tendering the project for the construction of the Pre-removal Center in Kos, AVGI 11.2.2017 <http://www.avgi.gr/article/10836/7893526/to-proto-kentro-krateses-sta-nesia-tha-einai-sten-ko>

²⁶² See <http://www.synigoros.gr/?i=human-rights.el.maziki-kratisi-allodapon.118221>

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accompanied minors is a truly inevitable situation, which, as such, and with its existence alone does not entail, by itself, infringement of Article 3 of the European Convention on Human Rights (ECHR) and Article 22 of the International Convention on the Rights of the Child (ICRC), the particular conditions of its implementation, when not complying with a humane and dignified treatment, constitute corresponding violations and cancel the protective nature of the declared purpose of the measure. In addition, the extension of detention beyond the reasonable time, even if due to the lack of accommodation spaces, inevitably underlines the forced nature of the measure, rendering it excessively onerous and disproportionate to its purpose.

It is known that the sovereign rights of each state include the decision not only for the stay but also the removal of third-country nationals, based on rules which the state itself has laid down. However, both the rules and their implementation cannot go beyond the perimeter imposed by respect for human dignity and the mandates of international, EU and national law.

A typical example are **forced returns**, which are a European policy (Return Directive 2008/115/EC, Law 3907/2011). In the difficult, by definition, subject of the restriction of personal liberty for those third-country nationals that enter or stay without legal residence permit in the country, the presence of the Greek Ombudsman is a guarantee for transparency in the police's actions and respect for the fundamental rights of the people involved. This is achieved by carrying out external monitoring on a sampling basis at each stage of the procedure of detention in view of return, and the removal operation, by road, sea or air. Issues of proportionality in the means of restraint, humane treatment, information provided to the irregular migrants on the procedure and their rights in a language they understand, communication with their family or a lawyer, respect for family unity and the dignity of the returning individuals, are substantial guarantees of the law, and external monitoring ensures that they are complied with in practice. There are however cases where the treatment of the returning third-country nationals does not always comply with the relevant specifications, as mentioned above in Chapter A5. The purpose of the Ombudsman is to lay down a common basis of understanding with each administrative body, that respect for rights is an integral part of an efficient returns system.

The consolidation of the belief that a state governed by the rule of law does not allow obscure fields of action to be created, is a key factor for the democratic legitimisation of police action, especially during a period when returns and readmissions from our sea borders tend to intensify, according to the European Commission's action plan. For this reason, in cases such as those mentioned above (see Chapter A5), of the Syrians included for readmission to Turkey and the Iraqi women who were intended for inclusion in readmission, in October 2016, even though they stated that they had expressed an intention for an asylum application, the Ombudsman asked for a specific time frame of the internal investigation by the General Inspector, which is pending for around 4 months. And this to leave no margin for any impressions to be formed that the purpose of return for the State can lead to discounts on basic guarantees and fundamental rights, such as the right of international protection from non-refoulement.

Even when the refugees and the migrants are living **in freedom**, the adverse living conditions observed during the 2015-2016 period, make the protection of their fundamental rights so difficult that in certain cases they may be seen even as cases of inhuman and degrading treatment.

The belief that human rights are simply theoretical constructions, and do not create corresponding obligations for the state is reflected vividly in the case of the **verification of minority**, where, even though there is a legislative provision for its diagnosis procedure, the mechanistic and deficient compliance deprives an indefinite number of minors from third countries of the protection they are entitled to. Unfortunately the mandate with overriding legislative power (Article 3 ICRC, Law 2201/1992), to evaluate as a priority the child's interest in all decisions related to it, whether taken by legislative bodies, administrative authorities, or public or private organisations of social protection, does not appear to provoke the required reflexes in the Administration. A main expression of all the above is the disregard of the presumption of minority each time it is doubted or even when the relevant claim is made by the interested party, and the insistence to treat this party as an adult.

In direct contrast, we refer to the issue of **the integration of refugee children in education**. The child's right to education, as established in the CRC (Article 28 of Law 2101/1992) and the Constitution (Article 16), was one of the main challenges of the Greek society, after the massive entry into

the country of refugee and migrant populations during the past two years. The Greek Ombudsman's general estimate, regarding the degree to which this right was ensured for minors from third countries during the past two years is that, from an institutional aspect, there is now a relatively adequate legislative framework which would allow the unhindered access of all these children to the educational system. At the same time, the competent ministry makes a systematic effort in the direction of a smooth integration, having in fact established a Team for the Management, Coordination and Monitoring of Refugee Education, with the exact purpose of responding to the needs as they emerge. Of course, in practice, serious violations were discovered and still continue to be discovered, which pertain either to groups of children,²⁶³ or individual cases.²⁶⁴

In conclusion, in order to consolidate respect for human rights, it is not enough to legislate, but any legislative provision needs to be enhanced with means proportional to the intended protection, and be the result of central planning, without ignoring the fact that at the same time the relevant provisions constitute established claims of any person from the state.

4. Lack of integrated plan or the "solution" as part of the problem

Up to the beginning of 2016, Greece's role as a country which populations from Turkey crossed, having as their final destination other European countries, served as a pretext for the lack of an integrated reception and accommodation system. As of 2016, the increasingly certain "entrapment" of the persons arriving in the country for an indefinite period of time, forced the State to reconsider its position in the handling of the "refugee/migration crisis". However, the attempt to organise and implement an integrated and effective plan for meeting the living needs of the third-country nationals does not appear, to this date, to have succeeded, despite the consecutive announcements of the involved agencies.

²⁶³ For example, children over 15 years old for which there is no provision for the operation of DYEPs or reception classes in the regular programme, children of kindergarten age at accommodation centers, since up to February 2017 no kindergarten branches were operating in the framework of the DYEPs, children remaining in Reception and Identification Centers (hotspots), where no DYEPs have been established.

²⁶⁴ e.g. refusal of enrolment in a school within the urban fabric due to missing supporting documents or by invoking lack of capacity.

The failures, shortages, and the image of an Administration that is struggling to meet needs that appear to overwhelm it constantly, in each one of the areas we examined (operational, regulatory and rights), have as a common background the failure of the key national and European stakeholders, to realise in time, before 2015 and 2016, which is the period investigated by this report, and to interpret in political terms the situation unfolding in the field. The estimate, initially that the refugees/migrants will not come, then that those that came will quickly leave and go "somewhere else", and finally, that those that stayed will encounter hardships, will despair and will turn back, are different aspects of this absence of political planning that prevailed in the reaction of the European and Greek Administration. The effort of an exclusively managerial approach towards a crisis with serious financial, social and political aspects, could not have much success, beyond the hope for a management-administrative miracle, which did not however materialise.

This is not to minimise in any case the hard work of those members of the machinery of state, and mainly the police and the armed forces, who not only fought hard to fulfil their duties and their mission, but often found themselves meeting real and urgent needs in fields far from their competences. It does not also minimise the voluntary offer of citizens, organisations and societies, which, using all means available to them, tried to bridge the gaps of the machinery of state. The fact however is that the State and the Administration, at least at central level, not only appeared unprepared, while they should have been prepared, but, at least during the first period, failed to give a convincing answer to the anxiety of all the third-country nationals that continued to arrive in the country, as well as the Greek citizens that were worried about the consequences on their already difficult daily life.

The absence of an operational plan by the Greek State appears to be an integral part of the general pathology of the Greek system in the management of the needs of the migration/refugee populations, which led to a great extent to the inability of assuring several of the fundamental conditions for the reception and accommodation of the third-country nationals entering the country. Underlying this pathology is the lack of political will to integrate these individuals, who are handled as transit populations.

The problem was not primarily economic. Broadly speaking,

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up to this day there does not appear to have been any serious lack of funds. There were however, and potentially still are, delays in the absorption and use of the available funds, as well as shortages and gaps in the mechanisms and the audit and payment procedures. The method in which EU and national funds were managed is on its own a particular, and very important issue, which might potentially be the subject of a separate investigation.

The problem was not social either. The local society, despite the fact that it is put to the test for the eighth consecutive year of an acute economic crisis with distinct and clear elements now of a humanitarian crisis, was quick to react. From the diverse solidarity groups, and all types of associations to the more institutional NGOs and the municipalities (with a few exceptions), the local society tried to help in any way it could the thousands of people crossing the Aegean Sea on a daily basis, reaching the islands and then mainland Greece. However, the inability of the State to create and convincingly promote to the society a uniform, cohesive narrative with specific characteristics, commitments, time limits and measurable results, sooner or later led to disappointment, suspicion, and sometimes open rupture.

This of course does not mean that the Greek administration was capable of fully responding and efficiently addressing the challenges of a crisis inside the crisis; the issue for Greece and for Europe was and remains primarily political. In summary, the EU as a whole, and by extension Greece, were unready, because they did not manage to formulate in time a clear and consistent political position regarding what the exact problem is, what are the separate needs, what are the desirable solutions and what would be in the end the appropriate political, economic and technical tools to achieve them.

The formulation of such a cohesive political framework, the timely preparation of a strategic plan, the selection of effective and flexible tools and the rational allocation of funds would multiply the operational capacity of the Administration. Housing and food, for example, are neither a purely technical nor a strictly managerial issue. The selection of the camps and food distribution plans are a clearly political decision, regardless if it was actually made on political terms or it was a reaction to an emergency need. And as a political decision it has in turn clear political consequences.

The stay of thousands of people for months in inappropriate

conditions is a message that the living conditions are not ideal for attracting other migrants. This message has two recipients: initially the residents of the camps themselves, who are constantly decreasing, since some of them potentially find a way to leave the country, as well as the broader public within and outside the borders. In recent years, this theory was put to the test with the administrative detention of all irregular migrants up to 2015, over a span of many months, often in unsuitable conditions, as the Greek Ombudsman had ascertained. However, the attempt to discourage irregular migrants, through the harsh conditions of their treatment, beyond the risks for the fundamental right to the humane treatment, was proven ineffective, as demonstrated by the constantly growing numbers of irregular entries into the country in 2014, and the wave of mass inflows of the second half of 2015.

Today, the issue is not whether the tents will be replaced with containers, neither if the food will be cooked/purchased by the army nor distributed by an NGO. The truly important issue is the existence of these fenced accommodation facilities themselves, the risk of ghettoisation or institutionalisation, the segregation, the familiarisation of society with camps where certain foreigners live far from the locals, under the moderate or less moderate surveillance of the authorities, until one day they leave, preferably peacefully and quietly. And finally the issue is the replacement of these facilities with living terms and conditions that favour the smooth integration into society - for the duration of the accommodation, whether it is short or long. Accommodation of the few thousands of people remaining in Greece in regular apartments and houses within the urban fabric or in the countryside, giving them the ability to buy themselves their daily supplies, food, etc. from the local market, the education of children,²⁶⁵ the employment of the adults and the encouragement of everyone's participation in social, cultural and economic activities, are all political issues, in the sense that they require the formulation of a consistent policy before the selection of the means and the time of its implementation.

Similarly in the case of unaccompanied minors, the example of the absence of a guardianship framework, that cancels in practice any attempt for provision of care, is characteristic. Thus, during the open borders period, the absence of any

²⁶⁵ The ambivalence observed in education, is inevitably linked to the generally ambiguous attitude of the Greek State, regarding the degree and the speed of integration into the Greek society of the refugee and migrant populations that arrived in recent years (with recognition of rights and creation of the corresponding institutional frameworks).

care led these minors to follow the same Balkan route with their adult co-travellers, with the risks for exploitation and further victimisation being apparent. To the contrary, during the following period, with the revival of the policies that led towards the restriction of liberty, the corresponding treatment of the minors was subsequently affected, held even in police stations in light of course of the protective custody.

The political choice, despite being a short-term arduous and demanding process, has the advantage that in the mid-term it is proven effective and productive. This is because it contains both the information and the prospect. Thus, the Administration is implementing a clear plan, with specific goals and time schedules, and is evaluated based on results. The local society as well as anyone participating in the public debate, from the media to the church, know about the plan and the objectives pursued, and are clearly more accepting and cooperative, since they are not in danger of surprises.

The central administration had and continues to have a big part of the responsibility regarding the failure to plan and the shortcomings in the organisation. On the other side, the EU, and specifically its primary political instrument, the Council, did not appear to realise in time the magnitude of the challenge. The absence here as well of a clear political choice and corresponding planning, was more than obvious, because the leadership of many Member States was watching with anxiety or even terror, the thousands of people struggling to cross the so-called Balkan Route. And thus, first the borders were closed and then they all started to look for solutions.

The prevalent political choice in the EU appears to be reflexive, and substantially focused on one goal: deterrence. From the European Agenda for migration in the first half of 2015, to the EU-Turkey statement of 18 March 2016, the main objective appears to be the prevention of the mass movement of migrant and refugee populations to Europe. In the European agenda for migration on 13.5.2015, the specific and immediate actions which the European Commission was called upon to implement, were linked in principle with the protection of the sea borders and combating human trafficking.²⁶⁶ This preclusive logic also encompasses the announcement of the reinforcement of the role of FRONTEX in return issues.

The logic of the hotspots, as nodal points of reception and control of the mass arrivals, in Lampedusa, or in five crucial islands from the aspect of inflows in Greece, essentially prepared the policy for the control of the EU sea borders which was jointly declared with Turkey on 18.3.2016 and aims to deter the wave of the incoming arrivals through their prompt readmission to Turkey. In this framework, the Greek services were essentially called upon to consider Turkey as a safe (or not) third country for asylum applicants. The main goal of the Statement, regardless of any other dysfunctions, was to reduce the mass inflows at the sea borders of the Aegean, which is an effect that was being reported since April 2016.

However, the institutions and the Member States of the most prosperous and politically developed union should provide political solutions and respond to the challenges under the terms of the rule of law and the protection of human rights. The political leadership of the EU Member States, with few exceptions, displayed weak reflexes, undertaking timid commitments (acceptance of settlement of a few tens of thousands of refugees), attempting institutional acrobatics, such as the so-called EU-Turkey Statement, and essentially recommending to assign the handling of the problem to the first-line Member States, such as Greece and Italy. The recommendation included the deterrence of the migrant and refugee flows with the help of NATO and FRONTEX and the return of those third-country nationals who managed to cross the borders, either to their home country or Turkey, in exchange of monetary compensation and the material and technical support of the Member States that are in the so-called first line. Up to the beginning of 2017 when this report was being prepared, Greece appeared, at least in practice, to have accepted this role without the intention of formulating and implementing a policy with separate distinct goals.

The Greek Ombudsman, with the mandates granted by the State, as an independent authority that promotes and protects human rights in general, and also children rights, as a national mechanism for the prevention of torture and abuse, and as a national mechanism for the external monitoring of the return operations of third-country nationals, will continue to closely monitor the management of the refugee-migrant issue in Greece. It furthermore reserves the right to return with a new investigation, covering the issue in total or specific aspects of it.

²⁶⁶ Reinforcement of the FRONTEX "Triton" and "Poseidon" operations, an operation in the Mediterranean for the dismantling of the rings of illegal trafficking of migrants and the fight against human trafficking according to international law.

