

# Country Report: Greece



2017  
Update



## Acknowledgements & Methodology

The present updated report was written by Alexandros Konstantinou and Athanasia Georgopoulou, Aikaterini Drakopoulou, Vasilis Fragkos, Kleio Nikolopoulou, lawyers – members of the Greek Council for Refugees (GCR) Legal Unit. Eleni Kagiou, Natalia Kafkoutou, Eleni Koutsouraki, Efstathia Thanou, Aggeliki Theodoropoulou (in alphabetical order), lawyers – members of the GCR Legal Unit and Stefanie Lagos, Coordinator of the GCR Social Unit and Vangelis Papageorgiou, social workers – members of the GCR Social Unit have drafted and/or reviewed parts of the present report. The report was edited by ECRE.

This report draws on information provided by the Asylum Service, the Appeals Authority and the Appeals Committees (PD 114/2010), the Directorate of the Hellenic Police, the Ministry of Foreign Affairs, the Administrative Court of Athens, national and international jurisprudence, reports by European Union institutions, international and non-governmental organisations, as well as GCR's observations from practice and information provided by the GCR Legal and Social Unit.

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The information in this report is up-to-date as of 31 December 2017, unless otherwise stated.

## The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information on asylum practice in 23 countries. This includes 20 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, SI, UK) and 3 non-EU countries (Serbia, Switzerland, Turkey) which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website [www.asylumineurope.org](http://www.asylumineurope.org). The database also seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



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## Glossary

<b>EU-Turkey statement</b>	Statement of Heads of State or Government of 18 March 2016 on actions to address the refugee and migration crisis, including the return of all persons irregularly entering Greece after 20 March 2016 to Turkey.
<b>Fast-track border procedure</b>	Expedient version of the border procedure, governed by Article 60(4) of Law 4375/2016 and applicable in exceptional circumstances on the basis of a Ministerial Decision.
<b>Objections</b>	Procedure for challenging detention before the President of the Administrative Court, whose decision is non-appealable
<b>Old Procedure</b>	Asylum procedure governed by PD 114/2010, applicable to claims lodged before 7 June 2013
<b>Reception and Identification Centre</b>	Formerly First Reception Centre, closed centre in border areas where entrants are identified and referred to asylum or return proceedings. Six such centres exist in <b>Fylakio, Lesbos, Chios, Samos, Leros</b> and <b>Kos</b> .

## List of Abbreviations

<b>AEMY</b>	Health Unit SA   Ανώνυμη Εταιρεία Μονάδων Υγείας
<b>AIRE</b>	Advice on Individual Rights in Europe
<b>AMIF</b>	Asylum, Migration and Integration Fund
<b>AMKA</b>	Social Security Number   Αριθμός Μητρώου Κοινωνικής Ασφάλισης
<b>AAU</b>	Autonomous Asylum Unit   Αυτοτελές Κλιμάκιο Ασύλου
<b>AVRR</b>	Assisted Voluntary Return and Reintegration
<b>CERD</b>	United Nations Committee on the Elimination of Racial Discrimination
<b>EASO</b>	European Asylum Support Office
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>EKKA</b>	National Centre of Social Solidarity   Εθνικό Κέντρο Κοινωνικής Αλληλεγγύης
<b>ERF</b>	European Refugee Fund
<b>ESTIA</b>	Emergency Support To Integration and Accommodation
<b>ESWG</b>	Education Sector Working Group
<b>GCR</b>	Greek Council for Refugees
<b>JMD</b>	Joint Ministerial Decision
<b>KEA</b>	Social Solidarity Income   Κοινωνικό Επίδομα Αλληλεγγύης
<b>KEELPNO</b>	Hellenic Centre for Disease Control and Prevention   Κέντρο Ελέγχου και Πρόληψης Νοσημάτων
<b>KEPOM</b>	Central Operational Body for Migration   Κεντρικό Επιχειρησιακό Όργανο Μετανάστευσης
<b>L</b>	Law
<b>MD</b>	Ministerial Decision
<b>MPOCP</b>	Ministry of Public Order and Citizen Protection
<b>MIAR</b>	Ministry of Interior and Administrative Reconstruction
<b>NCHR</b>	National Commission for Human Rights
<b>PACE</b>	Parliamentary Assembly of the Council of Europe
<b>PD</b>	Presidential Decree
<b>RIC</b>	Reception and Identification Centre (formerly First Reception Centre)
<b>RIS</b>	Reception and Identification Service (formerly First Reception Service)
<b>RAO</b>	Regional Asylum Office   Περιφερειακό Γραφείο Ασύλου
<b>SIRENE</b>	Supplementary Information Request at the National Entries
<b>SIS</b>	Schengen Information System
<b>UNHCR</b>	United Nations High Commissioner for Refugees

## Statistics

### Overview of statistical practice

Monthly statistics on asylum applications and first instance decisions are published by the Asylum Service,<sup>1</sup> including a breakdown per main nationalities. Since the last months of 2016, the Asylum Service also publishes statistics on the application of the Dublin Regulation in its monthly reports. However, as of 2016 these reports no longer mention the number of asylum applications lodged from detention.

### Applications and granting of protection status at first instance: 2017

	Applicants in 2017	Pending at end 2017	Refugee status	Subsidiary protection	Rejection	Refugee rate	Subs. Prot. rate	Rejection rate
<b>Total</b>	58,661	36,340	9,323	1,041	12,149	41.4%	4.6%	54%

Breakdown by countries of origin of the total numbers

Syria	16,396	9,105	4,806	1	20	99.5%	0.1%	0.4%
Pakistan	8,923	4,749	111	16	5,613	1.9%	0.3%	97.8%
Iraq	7,924	6,549	1,245	428	521	56.7%	19.5%	23.8%
Afghanistan	7,567	5,146	1,152	455	492	54.9%	21.7%	23.4%
Albania	2,450	:	3	0	1,596	0.2%	0%	99.8%
Bangladesh	1,383	:	26	1	799	3.2%	0.1%	96.7%
Iran	1,316	:	360	10	249	58.1%	1.6%	40.3%
Palestine	1,311	:	442	3	15	96.1%	0.6%	3.3%
Georgia	1,107	:	0	0	557	0%	0%	100%
Egypt	970	:	:	:	:	:	:	:

Source: Asylum Service, Asylum Statistics, December 2017; Information provided on 15 February 2018.

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



### Gender/age breakdown of the total number of applicants: 2017

	Number	Percentage
<b>Total number of applicants</b>	58,661	-
Men	40,126	68.4%
Women	18,535	31.6%
Children	19,790	33.7%
Unaccompanied children	2,275	3.9%

Source: Asylum Service, Asylum Statistics, December 2017.

### Comparison between first instance and appeal decision rates: 2017

	First instance		Appeal		Appeal: Old Procedure	
	Number	Percentage	Number	Percentage	Number	Percentage
<b>Total number of decisions</b>	22,513	-	4,354	-	3,091	-
Positive decisions	10,364	46%	277	6.2%	305	9.8%
<i>Refugee status</i>	9,323	41.4%	80	1.8%	276	8.9%
<i>Subsidiary protection</i>	1,041	4.6%	43	0.9%	29	1%
<i>Referral for humanitarian status</i>	-	-	154	3.5%	2,786	90.1%
Negative decisions	12,149	54%	4,077	93.8%	N/A	N/A

Source: Asylum Service; Appeals Authority; Directorate of Hellenic Police.

The “old procedure” for applications lodged prior to 7 June 2013 does not distinguish referral for humanitarian status from negative decisions.

## Overview of the legal framework

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

Title (EN)	Original Title (GR)	Abbreviation	Web Link
<p>Law 4375/2016 “Organisation and functioning of the Asylum Service, Appeals Authority, Reception and Identification Service, establishment of General Secretariat for Reception, transposition of Directive 2013/32/EU of the European Parliament and of the Council ‘on common procedures for granting and withdrawing international protection (recast)’ (L 180/29.6.2013), provisions on employment of beneficiaries of international protection” and other provisions. Gazette 51/A/3-4-2016</p> <p><i>Amended by:</i> Law 4399/2016, Gazette 117/A/22-6-2016 <i>Amended by:</i> Law 4461/2017, Gazette 38/A/28-3-2017 <i>Amended by:</i> Law 4485/2017, Gazette 114/A/4-8-2017</p>	<p>Νόμος 4375/2016 «Οργάνωση και λειτουργία Υπηρεσίας Ασύλου, Αρχής Προσφυγών, Υπηρεσίας Υποδοχής και Ταυτοποίησης σύσταση Γενικής Γραμματείας Υποδοχής, προσαρμογή της Ελληνικής Νομοθεσίας προς τις διατάξεις της Οδηγίας 2013/32/ΕΕ του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου «σχετικά με τις κοινές διαδικασίες για τη χορήγηση και ανάκληση του καθεστώτος διεθνούς προστασίας (αναδιατύπωση)» (L 180/29.6.2013), διατάξεις για την εργασία δικαιούχων διεθνούς προστασίας και άλλες διατάξεις. ΦΕΚ 51/A/3-4-2016</p> <p><i>Τροπ.:</i> Νόμος 4399/2016, ΦΕΚ 117/A/22-6-2016 <i>Τροπ.:</i> Νόμος 4461/2017, ΦΕΚ 38/A/28-3-2017 <i>Τροπ.:</i> Νόμος 4485/2017, ΦΕΚ 114/A/4-8-2017</p>	<p>L 4375/2016 (Asylum Act)</p>	<p><a href="http://bit.ly/2kKm2cu">http://bit.ly/2kKm2cu</a> (EN) <a href="http://bit.ly/234vUhP">http://bit.ly/234vUhP</a> (GR)</p> <p><a href="http://bit.ly/2IKABdD">http://bit.ly/2IKABdD</a> (GR) <a href="http://bit.ly/2y0vNq5">http://bit.ly/2y0vNq5</a> (GR) <a href="http://bit.ly/2FLLM3H">http://bit.ly/2FLLM3H</a> (GR)</p>
<p>Law 3907/2011 “on the establishment of an Asylum Service and a First Reception Service, transposition into Greek legislation of Directive 2008/115/EC "on common standards and procedures in Member States for returning illegally staying third country nationals" and other provisions. Gazette 7/A/26-01-2011</p> <p><i>Amended by:</i> Presidential Decree 133/2013, Gazette 198/A/25-09-2013 Law 4058/2012, Gazette 63/A/22-03-2012 Law 4375/2016, Gazette 51/A/3-4-2016</p>	<p>Νόμος 3907/2011 «Ίδρυση Υπηρεσίας Ασύλου και Υπηρεσίας Πρώτης Υποδοχής, προσαρμογή της ελληνικής νομοθεσίας προς τις διατάξεις της Οδηγίας 2008/115/ΕΚ «σχετικά με τους κοινούς κανόνες και διαδικασίες στα κράτη-μέλη για την επιστροφή των παρανόμως διαμενόντων υπηκόων τρίτων χωρών» και λοιπές διατάξεις» ΦΕΚ 7/A/26-01-2011</p> <p><i>Τροποποίηση από:</i> Προεδρικό Διάταγμα 133/2013, ΦΕΚ 198/A/25-09-2013 Νόμος 4058/2012, ΦΕΚ 63/A/22-03-2012 Νόμος 4375/2016, ΦΕΚ 51/A/3-4-2016</p>	<p>L 3907/2011</p> <p>PD 133/2013 L 4058/2012 L 4375/2016</p>	<p><a href="http://bit.ly/1KHa9dV">http://bit.ly/1KHa9dV</a> (EN)</p> <p><a href="http://bit.ly/1GfXFJ2">http://bit.ly/1GfXFJ2</a> (GR) <a href="http://bit.ly/1FoiWx">http://bit.ly/1FoiWx</a> (GR) <a href="http://bit.ly/234vUhP">http://bit.ly/234vUhP</a> (GR)</p>
<p>Presidential Decree 114/2010 “on the establishment of a single procedure for granting the status of refugee or of</p>	<p>Προεδρικό Διάταγμα 114/2010 «Καθιέρωση ενιαίας διαδικασίας αναγνώρισης σε αλλοδαπούς και ανιθαγενείς</p>	<p>PD 114/2010</p>	<p><a href="http://bit.ly/1LWAO3C">http://bit.ly/1LWAO3C</a> (EN)</p>

<p>beneficiary of subsidiary protection to aliens or to stateless persons in conformity with Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status” Gazette 195/A/22-11-2010</p> <p><i>Amended by:</i> Presidential Decree 116/2012, Gazette 201/A/19-10-2012 Presidential Decree 113/2013, Gazette 146/A/14-06-2013</p> <p>Presidential Decree 167/2014, Gazette 252/A/01-12-2014 Law 4375/2016, Gazette 51/A/3-4-2016</p>	<p>του καθεστώτος του πρόσφυγα ή δικαιούχου επικουρικής προστασίας σε συμμόρφωση προς την Οδηγία 2005/85/ΕΚ του Συμβουλίου «σχετικά με τις ελάχιστες προδιαγραφές για τις διαδικασίες με τις οποίες τα κράτη μέλη χορηγούν και ανακαλούν το καθεστώς του πρόσφυγα», ΦΕΚ 195/A/22-11-2010</p> <p><i>Τροποποίηση από:</i> Προεδρικό Διάταγμα 116/2012, ΦΕΚ 201/A/19-10-2012 Προεδρικό Διάταγμα 113/2013, ΦΕΚ 146/A/14-06-2013</p> <p>Προεδρικό Διάταγμα 167/2014, ΦΕΚ 252/A/01-12-2014 Νόμος 4375/2016, ΦΕΚ 51/A/3-4-2016</p>	<p>(Old Procedure Decree)</p> <p>PD 116/2012 PD 113/2013 PD 167/2014 L 4375/2016</p>	<p><a href="http://bit.ly/1GfXCwV">http://bit.ly/1GfXCwV</a> (EN) <a href="http://bit.ly/1M36apZ">http://bit.ly/1M36apZ</a> (EN) <a href="http://bit.ly/1ENgV9B">http://bit.ly/1ENgV9B</a> (GR) <a href="http://bit.ly/1ct2sZY">http://bit.ly/1ct2sZY</a> (GR) <a href="http://bit.ly/234vUhp">http://bit.ly/234vUhp</a> (GR)</p>
<p>Presidential Decree 141/2013 “on the transposition into the Greek legislation of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 (L 337) on minimum standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted (recast)” Gazette 226/A/21-10-2013</p>	<p>Προεδρικό Διάταγμα 141/2013 «Προσαρμογή της ελληνικής νομοθεσίας προς τις διατάξεις της Οδηγίας 2011/95/ΕΕ του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου της 13ης Δεκεμβρίου 2011 (L 337) σχετικά με τις απαιτήσεις για την ανα γνώριση και το καθεστώς των αλλοδαπών ή των ανιθαγενών ως δικαιούχων διεθνούς προστασίας, για ένα ενιαίο καθεστώς για τους πρόσφυγες ή για τα άτομα που δικαιούνται επικουρική προστασία και για το περιεχόμενο της παρεχόμενης προστασίας (αναδιατύπωση)», ΦΕΚ 226/A/21-10-2013</p>	<p>PD 141/2013 (Qualification Decree)</p>	<p><a href="http://bit.ly/2lbV4aM">http://bit.ly/2lbV4aM</a> (GR)</p>
<p>Presidential Decree 220/2007 on the transposition into the Greek legislation of Council Directive 2003/9/EC from January 27, 2003 laying down minimum standards for the reception of asylum seekers Gazette 251/A/13-11-2007</p>	<p>Προσαρμογή της Ελληνικής Νομοθεσίας προς τις διατάξεις της Οδηγίας 2003/9/ΕΚ του Συμβουλίου της 27ης Ιανουαρίου 2003, σχετικά με τις ελάχιστες απαιτήσεις για την υποδοχή των αιτούντων άσυλο στα κράτη μέλη, ΦΕΚ 251/A/13-11-2007</p>	<p>PD 220/2007 (Reception Decree)</p>	<p><a href="http://bit.ly/2lImseP">http://bit.ly/2lImseP</a> (GR)</p>
<p>Law 4251/2014 “Immigration and Social Integration Code and other provisions” Gazette 80/A/01-04-2014</p> <p><i>Amended by:</i> Law 4332/2015, Gazette 76/A/09-07-2015</p>	<p>Νόμος 4251/2014 «Κώδικας Μετανάστευσης και Κοινωνικής Ένταξης και λοιπές διατάξεις» ΦΕΚ 80/A/01-04-2014</p> <p><i>Τροπ:</i> Νόμος 4332/2015, ΦΕΚ 76/A/09-07-2015</p>	<p>Immigration Code</p> <p>L 4332/2015</p>	<p><a href="http://bit.ly/1FOuxp0">http://bit.ly/1FOuxp0</a> (GR) <a href="http://bit.ly/1LfUfDB">http://bit.ly/1LfUfDB</a> (GR)</p>
<p>Law 3386/2005 “Entry, Residence and Social Integration of Third Country Nationals on the Greek Territory”</p>	<p>Νόμος 3386/2005 «Είσοδος, διαμονή και κοινωνική ένταξη υπηκόων τρίτων χωρών στην Ελληνική</p>	<p>L 3386/2005</p>	<p><a href="http://bit.ly/1Pps1eO">http://bit.ly/1Pps1eO</a> (EN) <a href="http://bit.ly/1Qkzh9R">http://bit.ly/1Qkzh9R</a> (GR)</p>

<p><i>Abolished by:</i> Law 4251/2014 except for Articles 76, 77, 78, 80, 81, 82, 83, 89(1)-(3) <i>Amended by:</i> Law 4332/2015</p>	<p>Επικράτεια» <i>Καταργήθηκε από:</i> Νόμος 4251/2014 πλην των διατάξεων των άρθρων 76, 77, 78, 80, 81, 82, 83, 89 παρ. 1-3 <i>Τροπ.:</i> Νόμος 4332/2015</p>		
<p>Presidential Decree 131/2006 on the transposition of Directive 2003/86/EC on the right to family reunification Gazette 143/A/13-7-2006  <i>Amended by:</i> PD 167/2008, PD 113/2013</p>	<p>Προεδρικό Διάταγμα 131/2006 Εναρμόνιση της ελληνικής νομοθεσίας με την Οδηγία 2003/86/ΕΚ σχετικά με το δικαίωμα οικογενειακής επανένωσης, ΦΕΚ 143/A/13-7-2006 <i>Τροπ:</i> ΠΔ 167/2008, ΠΔ 113/2013</p>	<p>PD 131/2006 (Family Reunification Decree)</p>	<p><a href="http://bit.ly/2nHCPOu">http://bit.ly/2nHCPOu</a> (GR)</p>

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

Title (EN)	Original Title (GR)	Abbreviation	Web Link
<p>Joint Ministerial Decision οικ. 13257/2016 on the implementation of the special border procedure (Article 60(4) L 4375/2016) Gazette B/3455/26.10.2016</p>	<p>Κοινή Υπουργική Απόφαση οικ. 13257/2016: Εφαρμογή των διατάξεων της παραγράφου 4 του άρθρου 60 του Ν. 4375/2016 (Α" 51), ΦΕΚ Β/3455/26.10.2016</p>	<p>Fast-Track Border Procedure JMD</p>	<p><a href="http://bit.ly/2maKUeC">http://bit.ly/2maKUeC</a> (GR)</p>
<p>Joint Ministerial Decision οικ. 12205 on the provision of legal aid to applicants for international protection Gazette B/2864/9-9-2016</p>	<p>Κοινή Υπουργική Απόφαση οικ. 12205: Παροχή νομικής συνδρομής σε αιτούντες διεθνή προστασία, ΦΕΚ Β/2864/9-9-2016</p>	<p>Legal Aid JMD</p>	<p><a href="http://bit.ly/2kPSjzE">http://bit.ly/2kPSjzE</a> (GR)</p>
<p>Joint Ministerial Decision 1982/2016 on age assessment of applicants for international protection Gazette B/335/16-2-2016</p>	<p>Κοινή Υπουργική Απόφαση 1982/2016 διαπίστωση ανηλικότητας των αιτούντων διεθνή προστασία, ΦΕΚ Β/335/16-2-2016</p>	<p>Age Assessment JMD</p>	<p><a href="http://bit.ly/2lc8mDX">http://bit.ly/2lc8mDX</a> (GR)</p>
<p>Decision οικ. 868/2018 of the Director of the Asylum Service on the duration of international protection applicants' cards Gazette B/201/30.01.2018</p>	<p>Απόφαση αριθμ. οικ. 868/2018 της Διευθύντριας Υπηρεσίας Ασύλου: Διάρκεια ισχύος δελτίων αιτούντων διεθνή προστασία, ΦΕΚ Β/201/30.01.2018</p>	<p>Asylum Seeker Card Decision</p>	<p><a href="http://bit.ly/2DEDtka">http://bit.ly/2DEDtka</a> (GR)</p>
<p>Decision οικ. 10464/2017 of the Director of the Asylum Service on restriction of movement of applicants for international protection Gazette B/1977/07.06.2017</p>	<p>Απόφαση αριθμ. Οικ. 10464/2017 της Διευθύντριας Υπηρεσίας Ασύλου: Περιορισμός κυκλοφορίας των αιτούντων διεθνή προστασία, ΦΕΚ Β/1977/07.06.2017</p>	<p>Restriction of Movement Decision</p>	<p><a href="http://bit.ly/2jpCCPo">http://bit.ly/2jpCCPo</a> (GR)</p>
<p>Joint Ministerial Decision οικ. 10566 on the procedure for issuing travel documents to beneficiaries of and</p>	<p>Κοινή Υπουργική Απόφαση οικ. 10566 Διαδικασία χορήγησης ταξιδιωτικών εγγράφων σε δικαιούχους</p>	<p>Travel Documents JMD</p>	<p><a href="http://bit.ly/2mfwqXA">http://bit.ly/2mfwqXA</a> (GR)</p>

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

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

The report was previously updated in **March 2017**.

- ❖ 29,718 persons arrived in Greece by sea in 2017, compared to 173,450 sea arrivals in 2016. The majority of those arrived in 2017 originated from Syria (42%), Iraq (20%) and Afghanistan (12%). More than half of the population were women (22%) and children (37%), while 41% were adult men.<sup>2</sup> In addition, a total of 5,651 persons have been arrested at the Greek-Turkish land borders in 2017, compared to 3,300 persons during in 2016.
- ❖ The Asylum Service registered 58,661 asylum applications in 2017. The number of applications submitted before the Asylum Service rose by 15%. Greece received the 8.5% of the total number of applications submitted in the EU, while it was the country with the highest number of asylum seekers per capita among EU Member States (5,295 first-time applicants per million population).<sup>3</sup> In 2017, Syrians continue to be the largest group of applicants with 16,396 applications.<sup>4</sup> A substantial increase of applications submitted from Turkish nationals was noted in 2017 (1,827 compared to 189 in 2016).<sup>5</sup>
- ❖ 2017 was the second year of the implementation of the EU-Turkey statement, despite the fact it was initially described “a temporary and extraordinary measure”. In February 2017, the General Court of the European Union declared that “the EU-Turkey statement, as published by means of Press Release No 144/16, cannot be regarded as a measure adopted by the European Council, or, moreover, by any other institution, body, office or agency of the European Union, or as revealing the existence of such a measure that corresponds to the contested measure.”<sup>6</sup> An appeal was lodged before the CJEU in April 2017.<sup>7</sup> The United Nations Special Rapporteur on the human rights of migrants expressed his concern that the statement “constitutes a political ‘deal’ without mandatory value in international law. Its legal basis is undermined and it cannot be legally challenged in courts. Despite its effects, the... Court... has determined it to be non-reviewable.”<sup>8</sup>
- ❖ Substantial asylum reforms, driven by the implementation of the EU-Turkey statement, also took place in 2017. Provisions related to the implementation of the Statement introduced by L 4375/2016 in April 2016 have been amended in June 2016 and subsequently in March 2017 and August 2017. Meanwhile, the recast Reception Conditions Directive has not been transposed in national law, despite the fact that this should have been done by June 2015.
- ❖ Throughout 2017, cases of alleged push backs at the Greek-Turkish land border of Evros have been systematically reported. The Council of Europe Commissioner for Human Rights and UNHCR among others have expressed their concerns about the alleged practice.<sup>9</sup> An *ex officio* investigation as launched by the Ombudsman in June 2017.<sup>10</sup>

<sup>2</sup> UNHCR, *Greece – Sea arrivals dashboard*, December 2017, available at: <http://bit.ly/2FmOjQD>.

<sup>3</sup> Eurostat, ‘Asylum in the EU Member States’, 47/2018, 20 March 2018, available at: <https://bit.ly/2u9hZMU>.

<sup>4</sup> Asylum Service, ‘The work of the Asylum Service in 2017’, 25 January 2018, available at: <http://bit.ly/2BsCDGd>.

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

<sup>6</sup> General Court of the European Union, Cases T-192/16, T-193/16 and T-257/16 *NF, NG and NM v. European Council*, Order of 28 February 2017, press release available at: <http://bit.ly/2IWZPrr>.

<sup>7</sup> CJEU, Cases C-208/17 P, C-209/17 P and C-210/17 P *NF, NG and NM v. European Council*.

<sup>8</sup> United Nations Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants on his mission to Greece*, A/HRC/35/25/Add.2, 24 April 2017, available at: <http://bit.ly/2rHF7kl>, para 31.

<sup>9</sup> Council of Europe Commissioner for Human Rights, Facebook post, 7 June 2017, available at: <http://bit.ly/2EqrSjC>; UNHCR, ‘UNHCR deeply concerned at reports of informal forced returns from Greece to Turkey’, 8 June 2017, available at: <http://bit.ly/2tbPoRO>.

<sup>10</sup> Ombudsman, Decision No 105, 9 June 2017, available in Greek at: <http://bit.ly/2ofLt6p>.



## Asylum procedure

- ❖ **Operation of the Asylum Service:** At the end of 2017, the Asylum Service operated in 22 locations throughout the country, compared to 17 locations at the end of 2016.<sup>11</sup> The recognition rate at first instance was of 46% in 2017. The recognition rate for unaccompanied children was significantly lower (27.5%).
- ❖ **Registration:** Without underestimating the number of applications lodged in 2017, access to asylum on the mainland continued to be problematic throughout 2017. The average period between pre-registration through Skype and full registration was 81 days in December 2017. Access to the asylum procedure for persons detained in pre-removal centres is also a matter of concern.
- ❖ **Processing times:** The average processing time at first instance is reported at about 6 months as of December 2017.<sup>12</sup> The actual average duration of the first instance procedure is longer if the delay between pre-registration and registration of the application is taken into consideration. 4,052 applications were pending for a period exceeding the year at the end of December 2017. Taking into consideration the fact that the personal interview had not yet taken place in 74.1% of cases by the end of January 2018 and the fact that personal interview appointments are scheduled approximately one year or more after the full registration of the application, the number of applications pending at first instance for over a year is highly likely to increase in the coming period.
- ❖ **Fast-track border procedure:** The impact of the EU-Turkey statement has been *inter alia* a *de facto* dichotomy of the asylum procedures applied in Greece. Asylum seekers arriving after 20 March 2016 on the Greek islands are subject to a fast-track border procedure. The United Nations Special Rapporteur on the Human Rights of migrants has highlighted that the provisions with regard to the exceptional derogation measures for persons applying for asylum at the border raise “serious concerns over due process guarantees”.<sup>13</sup> EASO’s involvement in the fast-track border procedure and complaints as to whether EASO officers exercise *de facto* power on decisions contrary to the Regulation establishing the Agency, is under examination by the European Ombudsman.<sup>14</sup>
- ❖ **Appeal:** Since the amendment of the composition of the Appeals Committees competent for examining appeals in June 2016, following reported EU pressure on Greece to respond to an overwhelming majority of decisions rebutting the presumption that Turkey is a “safe third country” or “first country of asylum” for asylum seekers, the second instance recognition rate has decreased significantly. In 2017, recognition rates remained low, far below the EU28 average: 1.84% were granted refugee status, 0.99% subsidiary protection, 3.54% were referred for humanitarian protection, and 93.63% were rejected. This may be an alarming finding as to the operation of an efficient and fair asylum procedure in Greece. Respectively, 98.2% of decisions issued by the Independent Appeals Committees in 2017 regarding Syrian applicants under the fast-track border procedure have upheld the first instance inadmissibility decisions on the basis of the safe third country concept in respect of Turkey.

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<sup>11</sup> Asylum Service, ‘The work of the Asylum Service in 2017’, 25 January 2018, available at: <http://bit.ly/2BsCDGd>.

<sup>12</sup> Information provided by the Asylum Service, 15 February 2018.

<sup>13</sup> Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants on his mission to Greece*, A/HRC/35/25/Add.2, 24 April 2017, available at: <http://bit.ly/2rHF7kl>, para 78.

<sup>14</sup> European Ombudsman, Case 735/2017/MHZ, Jul 2017, “EASO’s involvement in applications for international protection submitted in the ‘hotspots’ in Greece”, Case 735/2017/MHZ, 13 July 2017, available at: <http://bit.ly/2GEFYpg>; ECCHR, *Case report Greece: EASO’s influence on inadmissibility decisions exceeds the Agency’s competence and disregards fundamental rights*, April 2017.

- ❖ **Legal assistance:** A state-funded legal aid scheme on the basis of a list managed by the Asylum Service is operating for the first time in Greece as of September 2017. Despite this welcome development, the capacity of the second instance legal aid scheme remains limited. The provision of services under this scheme was only launched on 21 September 2017 and by the end of 2017 legal assistance had been provided to 941 appellants, while the total number of appeals lodged in 2017 was 11,632. Compliance of the Greek Authorities with their obligations under national legislation and the recast Asylum Procedures Directive remains a matter of concern. In addition, legal assistance before second instance procedure has also been provided to 3,600 appellants under the UNHCR-funded scheme.
  
- ❖ **Dublin:** Greece addressed 9,784 outgoing requests to other Member States under the Dublin Regulation, mostly based on family unity provisions. 4,268 applicants have been transferred from Greece to another EU country in 2017. Additional obstacles to family reunification occurred in 2017 due to a change in the practice of a number of the receiving Member States. On the other hand, the Greek Dublin Unit received 1,998 incoming requests under the Dublin Regulation in 2017. Greek authorities have accepted the responsibility in 71 cases. Two applicants have been transferred by the end of February 2018. On October 2017, the Administrative Court of Düsseldorf ruled against the transfer to Greece of an asylum applicant to Greece, due to systemic flaws in the asylum procedure and in the reception conditions for applicants in Greece.
  
- ❖ **Relocation:** In accordance with Council Decisions 2015/1523 and 2015/1601 the relocation scheme was officially ceased at the end of September 2017. Out of the target of 66,400 asylum seekers to be relocated from Greece, 21,731 had effectively been transferred as of 28 January 2018.
  
- ❖ **Safe third country:** On 22 September 2017, the Council of State delivered two rulings concerning an application for annulment brought by two Syrian nationals *inter alia* on the application of the safe third country concept in respect of Turkey. The Council of State rejected the applications by finding that the criteria of protection from threat to life or freedom, serious harm and *refoulement* were fulfilled by Turkey, referring mainly on the letters provided by the Turkish authorities, as well as the large number of Syrians present in Turkey. It also stated that the notion of “protection in accordance with the Geneva Convention” does not require the third country to have ratified the Geneva Convention, and in fact without geographical limitation, or to have adopted a protection system which guarantees all the rights foreseen in that Convention. Following the issuance of the Decisions the Council of State, the National Commission on Human Rights, recalled its position that a “[p]ossible characterization of Turkey as safe third country... collides with the Turkish geographical limitation to the ratification of the 1951 Geneva Convention” and noted that the Court did not consider whether the rights of the Syrians in Turkey are effectively exercised in practise as well as the situation in Turkey, especially after the failed coup attempt and its impact on the respect of fundamental human rights.<sup>15</sup> A case of a Syrian applicant facing return to Turkey on the basis of an inadmissibility decision is pending before the ECtHR.<sup>16</sup> As regards applications of non-Syrian nationals examined on admissibility, no application has been deemed inadmissible based on the safe third country concept in 2017.

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<sup>15</sup> National Commission on Human Rights, *Report on the condition of the reception and asylum system in Greece*, 22 December 2017, available at: <http://bit.ly/2nkf1P0>.

<sup>16</sup> ECtHR, *J.B. v. Greece*, Application No 54796/16, Communicated on 18 May 2017. See also AIRE Centre, ECRE, ICJ and Dutch Council for Refugees, *Third party intervention in J.B. v. Greece*, 4 October 2017, available at: <http://bit.ly/2qSRxoU>; Gisti and International Federation for Human Rights (FIDH), *Third part intervention in J.B. v. Greece*, 20 September 2017, available at: <http://bit.ly/2DFZ0h8>.



- ❖ **Identification:** Pressure on the Greek authorities to “reduce the number of asylum seekers identified as vulnerable” continued to be reported in 2017. However, “far from being over-identified, vulnerable people are falling through the cracks and are not being adequately identified and cared for.”<sup>17</sup> A new medical vulnerability template, has been adopted as of the end of 2017 and early 2018 for vulnerability screening in reception and identification procedures on the islands. Concerns have been raised as of the distinction between “medium” and “high” vulnerability, as cases classified as of “medium” vulnerability are deprived *inter alia* by special procedural guarantees, provided by national law and the recast Procedural Directive. No best interest of the child determination procedure is in place and the lack of a substantial and effective guardianship system for unaccompanied minors has been reputedly reported over the years.

#### *Reception conditions*

- ❖ **Freedom of movement:** Asylum seekers subject to the EU-Turkey statement are issued a geographical restriction, ordering them not to leave the respective island until the end of the asylum procedure. The practice of geographical restriction has led to a significant overcrowding of the facilities on the islands and thus to the deterioration of reception conditions. An application for annulment against the decision imposing the geographical restriction of asylum seekers on the islands has been filed before the Council of State by GCR and the Bar Associations of Lesbos, Rhodes, Chios, Kos and Samos.
- ❖ **Reception capacity:** The number of reception places in the EKKA referral network has decreased to 1,530 in January 2018, compared to 1,896 in January 2017. Acceptance rate to EKKA facilities was of 35.2% in 2017. At the same time, most temporary camps on the mainland continue to operate without clear legal basis or official site management. A number of 22,595 places were available as of 28 December 2017 under the UNHCR scheme. At the end of 2017, out of a total 3,350 unaccompanied children estimated in Greece at the end of the year, as many as 2,290 were on a waiting list for placement in a shelter. A number of 12,609 newly arrived persons remain stranded at the Eastern Aegean Islands, as of 31 January 2018, where the nominal capacity of the reception facilities was of 7,876 places. The nominal capacity of the RIC facilities (hotspots) was of 6,246 while 9,902 were residing there, under a geographical restriction.
- ❖ **Living conditions:** Reception facilities on the islands remain substandard and may reach the threshold of inhuman and degrading treatment. Due to overcrowding, many people are sleeping in tents exposed to extreme weather conditions, while food and water supply is reportedly insufficient, sanitation is poor and security highly problematic. The mental health of the applicants on the islands is reported aggravating. On the mainland, even though in 2017 a number of camps in critical condition have been closed down, conditions in a number of camps are still reported as “poor”.<sup>18</sup> No designated body is in place to oversee reception conditions, and no possibility to lodge a complaint against conditions in reception facilities exists in Greece.<sup>19</sup>

#### *Detention of asylum seekers*

- ❖ **Detention after the launch of the EU-Turkey statement:** The launch of the implementation of the EU-Turkey statement has had an important impact on detention on the Eastern Aegean islands but also on the mainland. In 2017, a total of 46,124 removal decisions were issued,

<sup>17</sup> MSF, *A dramatic deterioration for asylum seekers on Lesbos*, July 2017, 3.

<sup>18</sup> See e.g. UNHCR, *Greece, Fact Sheet*, 1-31 January 2018, available at: <http://bit.ly/2oAeQzB>.

<sup>19</sup> FRA, *Current migration situation in the EU: Oversight of reception facilities*, September 2017, available at: <http://bit.ly/2xObtYA>, 2.

25,810 (56%) of which also contained a detention order. The number of third-country nationals detained in pre-removal centres under detention order in 2017 was 25,810 compared to 14,864 in 2016, while the increase has been much higher for asylum seekers (9,534 asylum seekers detained in 2017 compared to 4,072 in 2016).<sup>20</sup>

- ❖ **Detention facilities:** There were 8 active pre-removal detention centres in Greece at the end of 2017 compared to 6 active pre-removal facilities at the end of 2016. In line with the Joint Action Plan on the implementation of the EU-Turkey statement,<sup>21</sup> two pre-removal detention centres started operating in **Lesvos** and in **Kos**. Another one has been established in **Samos** in June 2017 but has not yet become operational by March 2018. Police stations continued to be used for prolonged immigration detention.
- ❖ **Detention of vulnerable persons:** Persons belonging to vulnerable groups are detained in practice, without a proper identification of vulnerability and individualised assessment prior to the issuance of a detention order. Due to the lack of accommodation facilities or transit facilities for children, detention of unaccompanied children is systematically imposed and may be prolonged for periods. A number of about 490 unaccompanied children remained detained at the end of 2017.
- ❖ **Detention for violation of geographical restriction:** Asylum seekers who are apprehended outside the island to which they have been ordered a geographical restriction are immediately detained in order to be returned to that island. This detention is applied without any individual assessment and without the person's legal status and any potential vulnerabilities being taken into consideration. In 2017, a total of 1,197 persons have been returned to the Eastern Aegean islands after being apprehended outside their assigned island.
- ❖ **Detention conditions:** Conditions of detention in pre-removal centres, police stations and other facilities continue to fall short of basic standards.

#### *Content of international protection*

- ❖ **Family reunification:** Severe obstacles render the effective exercise of the right to family reunification for refugees impossible. In 2017, 245 applications for family reunification were submitted before the Asylum Service. No further information is available regarding the outcome of these applications. Respectively, 17 applications for family reunification were submitted in 2017 before the Aliens Directorate of Attica of the Hellenic Police (*Διεύθυνση Αλλοδαπών Αττικής*) by applicants recognised as refugees under the "old procedure" in 2017. All of these applications have been rejected. In total, Moreover, since 21 October 2016 and until January 2018, only 13 visas of limited territorial validity (VTL) for family members of refugees have been granted in 2017 due to "exceptional humanitarian reasons", corresponding to 7 positive decisions issued by the Asylum Service.<sup>22</sup>

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<sup>20</sup> Information provided by the Directorate of the Hellenic Police, 29 January 2018.

<sup>21</sup> European Commission, *Joint Action Plan on the implementation of the EU-Turkey statement*, Annex to COM(2016) 792, 8 December 2016, para 18.

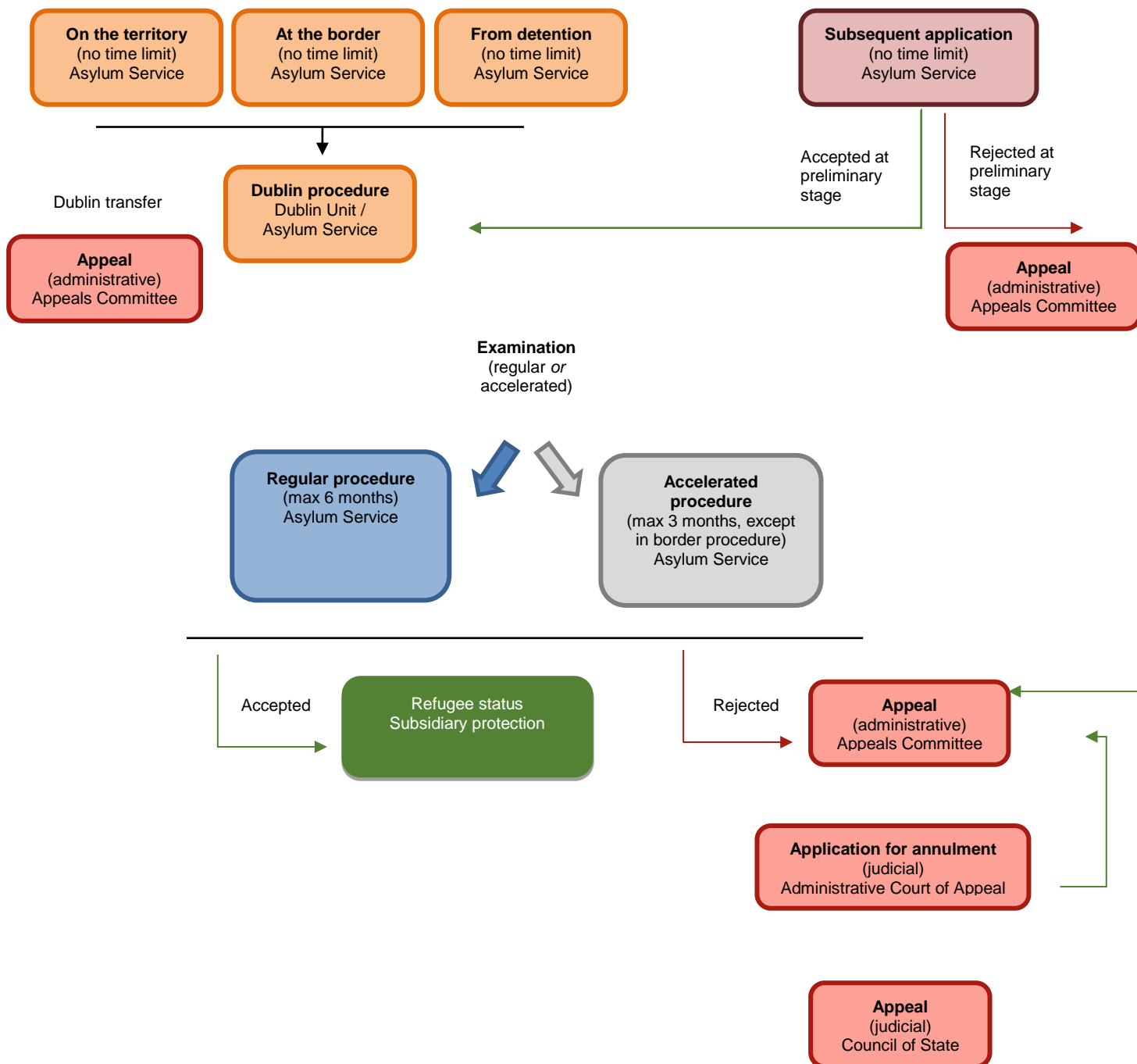
<sup>22</sup> Information provided by the Ministry of Foreign Affairs, 18 January 2018.

# Asylum Procedure

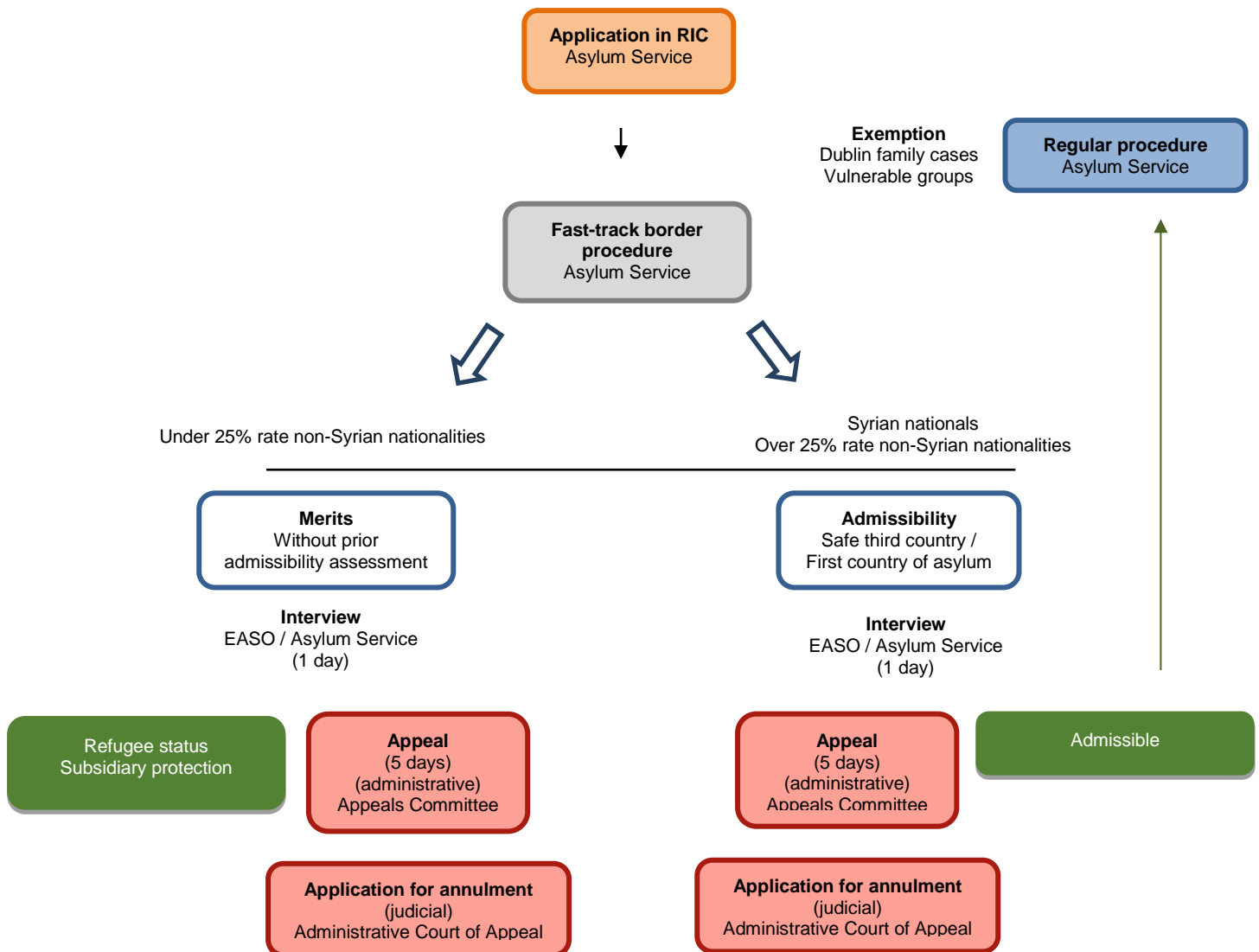
## A. General

### 1. Flow chart

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



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



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

## 2. Types of procedures

### Indicators: Types of Procedures

Which types of procedures exist in your country?

- |  |   |                             |
|--|---|-----------------------------|
| ❖ Regular procedure:                     | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Prioritised examination: <sup>23</sup> | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Fast-track processing: <sup>24</sup>   | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Dublin procedure:                      | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Admissibility procedure:               | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Border procedure:                      | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Accelerated procedure: <sup>25</sup>   | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Other:                                 |   |                             |

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

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

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

<sup>23</sup> For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) recast Asylum Procedures Directive.

<sup>24</sup> Accelerating the processing of specific caseloads as part of the regular procedure; “Fast-track processing” is not foreseen in the national legislation as such. The Asylum Service implements since September 2014 a fast-track processing of applications lodged by Syrian nationals, provided that they are holders of a national passport and lodge an asylum claim for the first time. Under this procedure asylum claims are registered and decisions are issued on the same day.

<sup>25</sup> Labelled as “accelerated procedure” in national law. See Article 31(8) recast Asylum Procedures Directive.

#### 4. Number of staff and nature of the first instance authority

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision-making in individual cases by the first instance authority? <sup>26</sup>
Asylum Service EASO	515-654 176	Ministry of Migration Policy	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Source: Asylum Service, 15 February 2018.

#### 5. Short overview of the asylum procedure

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

##### First instance procedure

Asylum applications are submitted before the Asylum Service. Twelve Regional Asylum Offices and ten Asylum Units were operational at the end of 2017. The Asylum Service is also competent for applying the **Dublin procedure**, with most requests and transfers concerning family reunification in other Member States, and to conclude pending **relocation** applications. Access to the asylum procedure still remains an issue of concern.

A **fast-track border procedure** is applied to applicants subject to the EU-Turkey statement, i.e. applicants arrived on the islands of Eastern Aegean islands after 20 March 2016, and takes place in the Reception and Identification Centres (RIC) where hotspots are established (Lesvos, Chios, Samos, Leros, Kos) and before the RAO of Rhodes. Under the fast-track border procedure, *inter alia*, interviews may also be conducted by European Asylum Support Office (EASO) staff, while very short deadlines are provided to applicants. The concept of “safe third country” has been applied for the first time for applicants belonging to a nationality with a recognition rate over 25%, including Syrians.

##### Appeal

First instance decisions of the Asylum Service are appealed before the Independent Appeals Committees under the Appeals Authority. An appeal must be lodged within 30 days in the regular procedure, 15 days in the accelerated procedure, in case of an inadmissibility decision or where the applicant is detained, and 5 days in the border procedure and fast-track border procedure. The appeal has automatic suspensive effect.

Since an amendment introduced in June 2016, following reported EU pressure on Greece with regards the implementation of the EU-Turkey Statement, *inter alia* the right to an oral hearing has been severely restricted. A further reform of March 2017 foresees the involvement of rapporteurs appointed by EASO, to assist the Appeals Committees in the examination of appeals.

<sup>26</sup> No relevant information has come to the attention of GCR as regards the first instance. Pressure on the Greek asylum system is reported from the European Commission in relation to the implementation of the EU-Turkey Statement, as for example to abolish the existing exemptions from the fast-track border procedure and to reduce the number of asylum seekers identified as vulnerable.

An application for annulment may be filed before the Administrative Court of Appeals against a negative second instance decision within 60 days from the notification. No automatic suspensive effect is provided.

## B. Access to the procedure and registration

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

#### Indicators: Access to the Territory

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

Throughout 2017, cases of alleged push backs at the Greek-Turkish border of **Evros** have been systematically reported. According to these allegations, the Greek authorities follow a pattern of arbitrary arrest of newly arrived persons entering the Greek territory from the Turkish land borders, *de facto* detention in police stations close to the borders, and transfer to the border, accompanied by the police, where they are pushed back to Turkey.

Cases have been systematically reported since mid-2017. These include the alleged push back: of Turkish nationals,<sup>27</sup> of which one person was subsequently found detained in Turkey;<sup>28</sup> of families and other persons belonging to vulnerable groups;<sup>29</sup> and of a person who had already been granted refugee status in another EU country.<sup>30</sup>

In February 2018, a report issued by GCR documented a number of complaints of push backs in Evros region.<sup>31</sup> GCR mentioned that allegations of push backs have been consistent and increasing in numbers, referring *inter alia* to large families, pregnant women, victims of torture and children.

Apart from the cases of newly arrived persons, the GCR report also refers to the push back of a pregnant woman who already enjoyed asylum seeker status in Greece and of asylum seekers detained in pre-removal facilities in **Northern Greece** who, after the expiry of the maximum time limit of detention, were subsequently pushed to back at the border. The Asylum Service has made an announcement of criminal offence to the Public Prosecutor's Office in Thrace for the first case.

The Council of Europe Commissioner for Human Rights has expressed deep concerns about reported collective expulsions from Greece and has "urge[d] the Greek Authorities to cease immediately the [alleged] pushback operations and uphold their human rights obligation to ensure that all people reaching Greece can effectively seek and enjoy asylum."<sup>32</sup> UNHCR has also asked the authorities to

<sup>27</sup> Hellenic League for Human Rights, 'More refoulements of Turkish asylum seekers in Evros', 6 June 2017, available at: <http://bit.ly/2oS1Y8K>.

<sup>28</sup> Hellenic League for Human Rights, 'Coordinated refoulements to Turkey?', 29 May 2017, available at: <http://bit.ly/2tn9nBG>.

<sup>29</sup> Efsyn, 'Ντοκουμέντο βίαιης επαναπροώθησης', 23 June 2017, available in Greek at: <http://bit.ly/2D9XcYT>; TVXS, 'Το βρώμικο μυστικό στις όχθες του Έβρου', 29 January 2018, available in Greek at: <http://bit.ly/2CgkDnf>; Al Jazeera, " , 28 January 2018, available at: <http://bit.ly/2tCsAQj>.

<sup>30</sup> Efsyn, 'Μου πήραν τα χαρτιά, με πήγαν στο ποτάμι και με πέρασαν απέναντι...', 12 February 2018, available in Greek at: <http://bit.ly/2DatYJ2>.

<sup>31</sup> GCR, *Reports of systematic pushbacks in the Evros region*, 20 February 2018, available at: <http://bit.ly/2FndTBN>.

<sup>32</sup> Council of Europe Commissioner for Human Rights, Facebook post, 7 June 2017, available at: <http://bit.ly/2EqrjC>.

thoroughly investigate these allegations.<sup>33</sup> The authorities have firmly denied these allegations, although no proper investigation has taken place.<sup>34</sup>

An *ex officio* investigation into the cases of alleged push backs was launched by the Ombudsman in June 2017.<sup>35</sup>

## 2. Reception and identification procedure

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

The “hotspot approach” was first introduced in 2015 by the European Commission in the European Agenda on Migration as an initial response to the exceptional flows.<sup>36</sup> Its adoption was part of the immediate action to assist Member States which were facing disproportionate migratory pressures at the EU’s external borders and was presented as a solidarity measure.

The initial objective of the “hotspot approach” was to assist Italy and Greece by providing comprehensive and targeted operational support, so that the latter could fulfil their obligations under EU law and swiftly identify, register and fingerprint incoming migrants, channel asylum seekers into asylum procedures, implement the relocation scheme and conduct return operations.<sup>37</sup>

For the achievement of this goal, EU Agencies, namely the European Asylum Support Office (EASO), the European Border and Coast Guard (Frontex), Europol and Eurojust, would work alongside the Greek authorities within the context of the hotspots.<sup>38</sup> The hotspot approach was also expected to contribute to the implementation of the Relocation scheme, proposed by the European Commission in September 2015.<sup>39</sup> Therefore, hotspots were envisaged initially as reception and registration centres, where the all stages of administrative procedures concerning newcomers – identification, reception, asylum procedure or return – would take place swiftly within their scope.

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

The total capacity of the five hotspot facilities was initially planned to be 7,450 places.<sup>40</sup> However, according to official data available by the end of 2017, their capacity has been reduced to 5,576 places:

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<sup>33</sup> UNHCR, ‘UNHCR deeply concerned at reports of informal forced returns from Greece to Turkey’, 8 June 2017, available at: <http://bit.ly/2tbPoRO>.

<sup>34</sup> See e.g. Directorate of the Hellenic Police, Reply to parliamentary question, No 7017/4/ 20967-γ’, 2 July 2017, available in Greek at: <http://bit.ly/2EHVp2l>.

<sup>35</sup> Ombudsman, Decision No 105, 9 June 2017, available in Greek at: <http://bit.ly/2ofLt6p>.

<sup>36</sup> European Commission, *European Agenda on Migration*, COM(2015) 240, 13 May 2015, 6.

<sup>37</sup> European Commission, *The hotspot approach to managing migration flows*, available at: <http://bit.ly/2kESJFK>.

<sup>38</sup> *Ibid.*

<sup>39</sup> Council Decisions (EU) 2015/1523 and 2015/1601 of 14 and 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, OJ 2015 L248/80.

<sup>40</sup> European Commission, *Third Report on the Progress made in the implementation of the EU-Turkey Statement*, COM(2016) 634, 28 September 2016.



Hotspot	Start of operation	Capacity	Occupancy
Lesvos	October 2015	2,330	5,452
Chios	February 2016	894	1,742
Samos	March 2016	700	2,368
Leros	March 2016	880	643
Kos	June 2016	772	702
<b>Total</b>		<b>5,576</b>	<b>10,907</b>

Source: National Coordination Centre for Border Control, Immigration and Asylum, Situation as of 30 December 2017: <http://bit.ly/2oTHJI7>.

In March 2016, the adoption of the highly controversial EU-Turkey Statement committing “to end the irregular migration from Turkey to the EU”,<sup>41</sup> brought about a transformation of the so-called hotspots on the Aegean islands.

With the launch of the EU-Turkey statement, hotspot facilities turned into closed detention centres. People arriving after 20 March 2016 through the Aegean islands and thus subject to the EU-Turkey Statement were automatically *de facto* detained within the premises of the hotspots in order to be readmitted to Turkey in case they did not seek international protection or their applications were rejected, either as inadmissible under the [Safe Third Country](#) or [First Country of Asylum](#) concepts, or on the merits. Following criticism by national and international organisations and actors, as well as due to the limited capacity to maintain and run closed facilities on the islands with high numbers of people, the practice of blanket detention has largely been abandoned in 2017. It has been replaced by a practice of systematic geographical restriction, i.e. an obligation not to leave the island and reside at the hotspot facility, which is imposed indiscriminately to every newly arrived person (see [Freedom of Movement](#)).

Between 20 March 2016 and 31 December 2017, 1,484 individuals had been returned to Turkey on the basis of the EU-Turkey Statement, of which 228 Syrian nationals (15%). Only 5 Syrian nationals had been returned on the basis that their asylum claims were found inadmissible at second instance on the basis of safe third country concept.<sup>42</sup> Of all those returned, 49% did not express the intention to apply for asylum or withdrew their intention or their asylum application in Greece.<sup>43</sup>

In this respect, it should be mentioned that on 28 February 2017, the European Union General Court gave an order, ruling that “the EU-Turkey statement, as published by means of Press Release No 144/16, cannot be regarded as a measure adopted by the European Council, or, moreover, by any other institution, body, office or agency of the European Union, or as revealing the existence of such a measure that corresponds to the contested measure.” Therefore “the Court does not have jurisdiction to rule on the lawfulness of an international agreement concluded by the Member States”.<sup>44</sup> The cases were appealed before the Court of Justice of the European Union (CJEU) in April 2017 and its decision is still pending at the time of writing.<sup>45</sup>

<sup>41</sup> European Council, *EU-Turkey statement*, 18 March 2016, available at: <http://bit.ly/1VjZvOD>.

<sup>42</sup> As far as GCR is aware these applicants did not want to challenge the second instance application before the competent Administrative Court of Appeal.

<sup>43</sup> UNHCR, *Returns from Greece to Turkey*, 31 December 2017, available at: <http://bit.ly/2oYLP0J>.

<sup>44</sup> General Court of the European Union, Cases T-192/16, T-193/16 and T-257/16 NF, NG and NM v. European Council, Order of 28 February 2017, press release available at: <http://bit.ly/2lWZPrr>.

<sup>45</sup> CJEU, Cases C-208/17 P, C-209/17 P and 210/17 P NF, NG and NM v *European Council*.

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

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

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

- (a) Identity and nationality verification;
- (b) Registration;
- (c) Medical examination and any necessary care and psychosocial support;
- (d) Provision of proper information about newcomers’ obligations and rights, in particular about the conditions under which they can access the asylum procedure; and
- (e) Identification of those who belong to vulnerable groups so that they be given the proper procedure.<sup>46</sup>

This approach was first implemented by the First Reception Centre (FRC) set up in **Evros** in 2013,<sup>47</sup> which has remained operational to date even though it has not been affected by the hotspot approach. Joint Ministerial Decision 2969/2015 issued in December 2015 provided for the establishment of five FRCs in the Eastern Aegean islands of **Lesvos, Kos, Chios, Samos and Leros**,<sup>48</sup> the regulation of which was provided by existing legislation regarding the First Reception Service.<sup>49</sup> However, this legislative act failed to respond to and regulate all the challenges arising within the scope of hotspots’ functions. As a result, issues not addressed by the existing legal framework, for example the involvement of EU Agencies in different procedures, long remained in a legislative vacuum.

In the light of the EU-Turkey statement of 18 March 2016, the Greek Parliament adopted on 3 April 2016 a law “On the organisation and operation of the Asylum Service, the Appeals Authority, the Reception and Identification Service, the establishment of the General Secretariat for Reception, the transposition into Greek legislation of the provisions of Directive 2013/32/EU, provisions on the employment of beneficiaries of international protection and other provisions”. This reform was passed through L 4375/2016.<sup>50</sup>

L 4375/2016 has partially attempted to regulate the establishment and function of hotspots and the procedures taking place there. However, national legislation has failed to effectively regulate the involvement of the EU Agencies, for example Frontex agents.

Following the enactment of L 4375/2016, the FRS was succeeded by the Reception and Identification Service (RIS) and was subsumed under what has now been established as Ministry of Migration Policy.

According to Article 8(2) L 4375/2016, the RIS is responsible for “Registration, identification and data verification procedures, medical screening, identification of vulnerable persons, the provision of information, especially for international or another form of protection and return procedures, as well as the temporary stay of third-country nationals or stateless persons entering the country without

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<sup>46</sup> Article 7 L 3907/2011.

<sup>47</sup> Joint Ministerial Decision 11.1/1076/2012, Gov. Gazette 3543/B/31.12.2012; Reception and Identification Service, *RIC at Fylakio, Evros*.

<sup>48</sup> Joint Ministerial Decision No 2969/2015, Gov. Gazette 2602/B/2-12-2015.

<sup>49</sup> Law 3907/2011 “On the Establishment of an Asylum Service and a First Reception Service, transposition into Greek Legislation of the provisions of the Directive 2008/115/EC ‘on common standards and procedures in Member States for returning illegally staying third-country nationals’ and other provisions”.

<sup>50</sup> L 4375/2016, Gov. Gazette 51/A/3-4-2016, available at: <http://bit.ly/2kKm2cu>.

complying with the legal formalities and their further referral to the appropriate reception or temporary accommodation structures.”<sup>51</sup>

Moreover, Article 9(1) L 4375/2016 provides: “All third-country nationals and stateless persons who enter without complying with the legal formalities in the country shall be submitted to reception and identification procedures. Reception and identification procedures include:

- a. the registration of their personal data and the taking and registering of fingerprints for those who have reached the age of 14,
- b. the verification of their identity and nationality,
- c. their medical screening and provision any necessary care and psycho-social support,
- d. informing them about their rights and obligations, in particular the procedure for international protection or the procedure for entering a voluntary return program,
- e. attention for those belonging to vulnerable groups, in order to put them under the appropriate, in each case, procedure and to provide them with specialised care and protection,
- f. referring those who wish to submit an application for international protection to start the procedure for such an application,
- g. referring those who do not submit an application for international protection or whose application is rejected while they remain in the RIC to the competent authorities for readmission, removal or return procedures.”

According to the law, newly arrived persons should be directly transferred to a Reception and identification Centre (RIC), where they are subject to a 3-day “restriction of freedom within the premises of the centre” (περιορισμός της ελευθερίας εντός του κέντρου), which can be further extended by a maximum of 25 days if reception and identification procedures have not been completed.<sup>52</sup> This restriction of freedom entails “the prohibition to leave the Centre and the obligation to remain in it”.<sup>53</sup>

Bearing in mind that according to the law the persons should remain restricted within the premises of the RIC and are not allowed to leave, the measure provided by Article 14 L4375/2016 is a *de facto* detention measure, even if it is not classified as such under Greek law. No legal remedy in order to challenge this “restriction of freedom” measure is provided by national legislation for the initial 3-day period.<sup>54</sup> Moreover, the initial restriction is automatically imposed,<sup>55</sup> as national law does not foresee an obligation to conduct an individual assessment.<sup>56</sup> This measure may also applied to asylum seekers even after the lodging of their application, requiring them to remain in the premises of RIC for a total period of 25 days.<sup>57</sup>

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

As regards persons arriving on the Eastern Aegean islands and thus subject to the EU-Turkey Statement, at the early stages of the implementation of the Statement, a detention measure, either *de facto* under the pretext of a decision restricting the of freedom within the premises of the RIC for a period of 25 days or under a deportation decision together with an detention order, was systematically and indiscriminately imposed to all newcomers. This remained the case in several islands for certain periods during 2017; for example **Lesvos** April 2017.

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<sup>51</sup> See also Article 9 L 4375/2016, outlining the “reception and identification procedures”.

<sup>52</sup> Article 14(2) L 4375/2016.

<sup>53</sup> Article 14(3) L 4375/2016.

<sup>54</sup> Article 14(4) L 4375/2016.

<sup>55</sup> *Ibid.*

<sup>56</sup> Article 14(2) L 4375/2016.

<sup>57</sup> Article 14(4) L 4375/2016.

Following criticism by national and international organisations and actors, and due to limited capacity to maintain and run closed facilities on the islands with high numbers of populations,<sup>58</sup> the “restriction of freedom” within the RIC premises is no longer applied in the RIC of **Lesvos, Chios, Samos, Leros and Kos**. Newly arrived persons are allowed to exit the RIC. However, a geographical restriction is systematically imposed on every newly arrived person on the Greek islands, initially by the police and subsequently by the Asylum Service.

Since the implementation of the EU-Turkey Statement, and due to the manageable number of people arriving in Greece, all newcomers are registered by the RIS. However, the provision of medical and psychosocial services as required by law has not been always guaranteed for all newcomers (see also [Identification](#)).

In practice, those arriving on the Greek islands and falling under the EU-Turkey statement are subject to a “restriction of freedom of movement” decision issued by the Head of the RIC. The decision is revoked once the registration by the RIC is completed, usually within a couple of days.

It is followed by a return decision “based on the readmission procedure” and a pre-removal detention order are issued by the competent Police Directorate. The return decision and detention order are respectively suspended by a “postponement of deportation” decision of the General Regional Police Director.<sup>59</sup> The latter decision imposes a geographical restriction, ordering the individual not to leave the island and to reside – in most cases – in the RIC or another accommodation facility on the island until the end of the asylum procedure. Once the asylum application is lodged, the same geographical restriction is imposed by the Asylum Service (see [Freedom of Movement](#)).

Different patterns of administrative practice occur, often to a certain degree of ambiguity. In some cases, the decision of the Head of the RIC is not always issued prior to the decision of the police.

The lawfulness of the above practice is also questionable:

- A deportation decision to be followed by a geographical restriction is systematically issued against every newly arrived person, despite the fact that the majority of newcomers have already expressed the intention to seek asylum upon arrival, thus prior to the issuance of a deportation decision.<sup>60</sup>
- The decision of the Police imposing the geographical restriction on the island, entailing a restriction to the freedom of movement, is imposed indiscriminately without any individual assessment and a proportionality test to have taken place prior to its issuance. Moreover, it is imposed for an indefinite period, without a maximum time limit provided by law and without an effective legal remedy to be in place.<sup>61</sup>
- No prior individual decision of the Asylum Service is issued and no proper justification is provided for the imposition of the restriction of movement on each island, within the frame of the asylum procedure.<sup>62</sup> Decision 10464/2017 of the Director of the Asylum Service,<sup>63</sup> provides that a geographical restriction on the island is imposed to any asylum seeker whose application has been lodged before the RAO of **Lesvos, Rhodes, Samos, Leros and Chios** and the AAU of **Kos**, with the exception of applications which have been referred to the regular procedure.

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<sup>58</sup> UNHCR, *Explanatory Memorandum pertaining to UNHCR’s submission to the Committee of Ministers of the Council of Europe on developments in the management of asylum and reception in Greece*, May 2017, available at: <http://bit.ly/2BbSrAA>, 2.

<sup>59</sup> Pursuant to Article 78 L 3386/2005.

<sup>60</sup> Article 36(3) L 4375/2016: “The person who expresses his/her intention to submit an application for international protection is an asylum applicant, in accordance with the provisions of Article 34 point (d) of the present law.”

<sup>61</sup> See e.g. Human Rights Committee, *General Comment No. 27: Article 12 (Freedom of Movement)*, 2 November 1999, CCPR/C/21/Rev.1/Add.9, available at: <http://www.refworld.org/docid/45139c394.html>.

<sup>62</sup> Article 7 recast Reception Conditions Directive.

<sup>63</sup> Asylum Service Director Decision No 10464/2017, Gazette B’ 1977/7.06.2017.

Consequently, the geographical restriction in the asylum procedure is applied indiscriminately, *en masse* and without any individual assessment. The impact of the geographical restriction on applicants' "subsistence and... their physical and mental health",<sup>64</sup> by taking into consideration reception conditions prevailing on the islands is not assessed. The aforementioned Decision is challenged before the Council of the State by GCR and the Bar Associations of Lesbos, Rhodes, Chios, Kos and Samos. The Decision is pending by the end of March 2018. (see [Freedom of Movement](#))

- The practice of indiscriminate imposition of geographical restrictions, initially by the police and then by the Asylum Service, against every newly arrived persons on the islands since the launch of the EU-Turkey Statement and for the implementation of the Statement, has led to a significant deterioration of the living conditions on the islands, which do not meet the basic standards provided by the Reception Directive. Newly arrived persons are obliged to reside for prolonged periods in overcrowded facilities, where food and water supply is reported insufficient, sanitation is poor and security highly problematic, while their mental health is aggravated (see [Reception Conditions](#)). In December 2017 the National Commission for Human Rights "point[ed] out the need to re-examine the policy of geographical restriction on the East Aegean islands, which on many occasions takes place without the appropriate rule of law guarantees" and recommended to the Greek Authorities "given the current conditions [on the islands], it is necessary to eliminate the entrapment of applicants for international protection in the Greek islands."<sup>65</sup>

A derogation from the aforementioned procedure is applied on **Lesvos** for single men belonging to low recognition rate nationalities. These persons are detained upon arrival on the basis of a so-called "pilot project" (see [Differential Treatment of Specific Nationalities in Detention](#)).

In addition, unaccompanied children, though particularly vulnerable, are not released after the completion of the reception and identification procedures. On the contrary, they remain detained under the authority of RIS or under the pretext of the "protective custody" in a separate wing of the RIC until they can be referred to accommodation shelters for children (see [Detention of Vulnerable Applicants](#)).

29,718 persons arrived in Greece by sea in 2017. The majority originated from Syria (42%), Iraq (20%) and Afghanistan (12%). More than half of the population are women (22%) and children (37%), while 41% are adult men.<sup>66</sup>

### Actors present in the RIC

A number of official actors are present in the RIC facilities on the inlands, including RIS, Frontex, Asylum Service, EASO and the Hellenic Police.

**Police:** The Police is responsible for guarding the external area of the hotspot facilities, as well as for the identification and verification of nationalities of newcomers.

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

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<sup>64</sup> Article 17(2) recast Reception Conditions Directive.

<sup>65</sup> National Commission for Human Rights, *Report on the condition of Reception and Asylum system in Greece*, 22 December 2017, available at: <http://bit.ly/2nkf1P0>.

<sup>66</sup> UNHCR, *Greece – Sea arrivals dashboard*, December 2017, available at: <http://bit.ly/2FmOjQD>.



**UNHCR / IOM:** Information is provided by UNHCR and International Organisation for Migration (IOM) staff, while interpretation services are currently provided by IOM and NGO [Metadras](#).

**Asylum Service:** Similarly, the Asylum Service has presence in the hotspots. According to L 4375/2016, those registered by the RIS expressing their will to seek international protection shall be referred to the competent Regional Asylum Office in order to have their claims registered and processed.<sup>67</sup>

**EASO:** EASO is also engaged in the asylum procedure. EASO experts have a rather active role within the scope of the [Fast-Track Border Procedure](#), as they conduct first instance personal interviews, they issue opinions regarding asylum applications and they are also involved in the vulnerability assessment procedure.

**RIS:** The RIS used to outsource medical and psychosocial care provision to NGOs, namely Médecins du Monde (MdM), PRAKSIS and Medical Intervention (MedIn). Since June 2017 the Centre for Disease Control and Prevention (*Κέντρο Ελέγχου και Πρόληψης Νοσημάτων*, KEELPNO), a private law entity supervised and funded directly by the Ministry of Health and Social Solidarity,<sup>68</sup> has started taking over the provision of the medical and psychosocial services. The Hellenic Red Cross was providing services during the transitional period, albeit with drastically reduced resources.<sup>69</sup> The transition process has proved to be rather lengthy and had not been completed on all islands by the end of 2017; this was the case in **Samos**. As reported, “following the departure of NGOs, medical and social services have seriously been minimised in the RICs, the needs of refugees are not being covered effectively. Huge gaps have been observed concerning psychological aid, and this in a period where the mental health of refugees is deteriorating severely... the system of vulnerability assessment seems to be breaking down.”<sup>70</sup> See also [Identification](#).

### 2.2.2. Reception and identification procedures in Evros

Persons entering Greece throughout the Greek-Turkish land border in Evros are subject to reception and identification procedures at the RIC of **Fylakio**, Orestiada. People transferred to the RIC in Fylakio are subject to a “restriction of freedom of movement” applied as a *de facto* detention measure, meaning that they remain restricted within the premises of the RIC. According to the most recent available data, on 1 August 2017, the number of persons remaining in the RIC of Fylakio was of 235 and the total capacity of the RIC was 240 persons.<sup>71</sup>

After the maximum period of 25 days, newly arrived persons are released, with the exception of those referred to pre-removal detention facilities, where they are further detained in view of removal. However, as GCR has noticed, unaccompanied children may remain in the RIC of Fylakio for a period exceeding the maximum period of 25 days under the pretext of “protective custody”, while waiting for a place in a reception facility to be made available. In 2017 this period reached 6 months in a number of children’s cases.

People arriving through the Evros border are not subject to the EU-Turkey Statement. Therefore they

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<sup>67</sup> Article 14(7) L 4375/2016.

<sup>68</sup> Established by L 2071/92.

<sup>69</sup> Médecins Sans Frontières (MSF), *A dramatic deterioration for asylum seekers on Lesbos*, July 2017, available at: <http://bit.ly/2vCJzAF>, 10.

<sup>70</sup> Refugee Support Aegean, ‘Serious gaps in the care of refugees in Greek hotspots; Vulnerability assessment system is breaking down’, 17 July 2017, available at: <http://bit.ly/2vHUmYP>; see also, Care et al., *Joint NGOs Statement: Lack of handover plans for the response in Greece puts asylum seekers at risk*, 11 June 2017, available at: <http://bit.ly/2i5g1H5>.

<sup>71</sup> Central Coordinating Organisation for Migration (KEPOM), *Summary Statement of Refugee Flows*, 1 August 2017, available at: <http://bit.ly/2CmmEd1>.

are not subject to the fast-track border procedure, their claims are not examined under the safe third country concept, and they are not imposed a geographical restriction upon release.

Since the last months of 2016 onwards, due to a gradual increase in arrivals at the Evros land border, delays between initial arrest by the police and transfer to the RIC have intensified, resulting in people including vulnerable groups and families being detained in pre-removal facilities or police stations.<sup>72</sup> Their detention “up to the time that [the person] will be transferred to Evros (Fylakio) RIC in order to be subject to reception and identification procedures”, as justified in the relevant detention decisions, has no legal basis in national law (see [Grounds for Detention](#)), and ranges from a few days to several weeks or even months, depending on the flows.<sup>73</sup>

Substantial gaps in the provision of reception and identification services, including medical services, are currently reported at Fylakio RIC. For example, a lack of interpretation in Farsi language and a lack of medical and social-psychological services is reported as of March 2018 due to which *inter alia* the identification of persons belonging to vulnerable groups is not possible.<sup>74</sup>

In 2017, a total of 5,651 persons have been arrested at the Greek-Turkish land border compared to 3,300 persons in 2016.<sup>75</sup>

### 3. Registration of the asylum application

#### Indicators: Registration

1. Are specific time limits laid down in law for asylum seekers to lodge their application?  
 Yes  No
2. If so, what is the time limit for lodging an application?

#### 3.1. Organisation and staffing of the Asylum Service

Article 6(1) PD 104/2012, as modified by L 4375/2016, provides for 12 Regional Asylum Offices (RAO) to be set up in Attica, Thessaloniki, Thrace, Epirus, Thessaly, Western Greece, Crete, Lesvos, Chios, Samos, Leros and Rhodes. It is possible to establish more than one Regional Asylum Office per region by way of Ministerial Decision for the purpose of covering the needs of the Asylum Service.<sup>76</sup>

In 2017, three Autonomous Asylum Units (AAU) have been turned into RAO (**Chios, Leros, Crete**), while three new AAU have been created: one dealing with applications from nationals of Georgia and Albania, located in the premises of the RAO of Thessaloniki;<sup>77</sup> one dealing with beneficiaries of international protection, located in the premises of the Central Asylum Service; and one dealing with applications of persons under custody, in the premises of the Aliens Police Directorate of Attica.<sup>78</sup> Applications from nationals of Bangladesh and Afghanistan in Attica are dealt with by the RAO of **Piraeus**.

<sup>72</sup> UNHCR, *Explanatory Memorandum pertaining to UNHCR’s submission to the Committee of Ministers of the Council of Europe on developments in the management of asylum and reception in Greece*, May 2017, 10.

<sup>73</sup> UNHCR, *Weekly Report*, 27 January 2017, available at: <http://bit.ly/2p1q2Fy>, 3; “UNHCR has issued letters to relevant authorities highlighting the delays which result in unjustified detention and concerns around detention conditions, among others.”

<sup>74</sup> RIC Evros, Document No 3956/2018.

<sup>75</sup> Hellenic Police, *Arrested irregular migrants for illegal entry or stay*, 11 months of 2017 – 11 months of 2016, available at: <https://bit.ly/2Gl52oY>.

<sup>76</sup> Article 1(3) L 4375/2016.

<sup>77</sup> Asylum Service Director Decision 4199/2017 on the establishment of an Asylum Unit for the processing of applications for international protection by Nationals of Georgia and Albania, Gov. Gazette B’ 881/16.03.2017.

<sup>78</sup> Asylum Service Director Decision 9778/2017, Gov. Gazette B’ 1936/2.06.2017.

At the end of 2017, the Asylum Service operated in 22 locations throughout the country, compared to 17 locations at the end of 2016.<sup>79</sup> Moreover, Moreover, a AAU in Ioannina, Western Greece is set to start operations by 15 March 2018.<sup>80</sup>

12 RAO and 10 AAU were operational as of 31 December 2017:

Operation of Regional Asylum Offices and Asylum Units: 2017		
Regional Asylum Office	Start of operation	Registrations 2017
Attica	Jun 2013	8,839
Thrace	Jul 2013	2,040
Lesvos	Oct 2013	11,952
Rhodes	Jan 2014	699
Western Greece	Jun 2014	987
Thessaloniki	Jul 2015	7,626
Samos	Jan 2016	5,116
Chios	Feb 2016	6,513
Leros	Mar 2016	1,389
Alimos (former Relocation)	Sep 2016	3,258
Piraeus	Sep 2016	3,977
Crete	Dec 2016	315
Autonomous Asylum Unit	Start of operation	Registrations 2017
Fylakio	Jul 2013	955
Amygdaleza	Sep 2013	1,543
Xanthi	Nov 2014	689
Kos	Jun 2016	1,698
Corinth	Aug 2016	1,065
Fast-Track (Syria)	Nov 2016	:
Applications from Pakistan	Dec 2016	:
Applications from Albania and Georgia	Mar 2017	:
Beneficiaries of international protection	Jun 2017	:
Applications from custody	Jun 2017	:

Source: Asylum Service, 15 February 2018; *Regional Asylum Offices*: <http://bit.ly/2opit9F>.

Applications lodged before the AAU Applications from Pakistan, AAU Fast-Track (Syria) and AAU Applications from custody are counted under the total number of applications submitted before the RAO of Attica. Applications lodged before the AAU Applications from Georgia and Albania are counted under the total number of applications submitted before the RAO of Thessaloniki.

The number of employees of the Asylum Service at the end of 2017 decreased from 654 staff members in January 2017 – 275 permanent staff and 379 on a fixed-term contract – to 515 active staff members in December 2017. This included 264 staff members with a permanent status and 251 staff members on fixed-term contracts.<sup>81</sup> A number of 218 permanent employees and 130 fixed-term employees are about to be hired in 2018, following a procedure initiated by the Asylum Service.<sup>82</sup>

<sup>79</sup> Asylum Service, 'The work of the Asylum Service in 2017', 25 January 2018, available at: <http://bit.ly/2BsCDGd>.

<sup>80</sup> Asylum Service Director Decision 3028, Gov. Gazette B' 310/2.02.2018.

<sup>81</sup> Information provided by the Asylum Service, 15 February 2018.

<sup>82</sup> *Ibid.*



The distribution of active Asylum Service staff by RAO or AAU is as follows:

Distribution of active Asylum Service staff: 31 December 2017			
Location	Permanent	Fixed-term	Total
Fast Track (Syria)	2	10	12
AAU Applications from Albania and Georgia	7		7
AAU Beneficiaries of international protection	4	3	7
AAU Applications from custody	2	1	3
AAU Applications from Pakistan	4		4
RAO Alimos	10	10	20
AAU Amygdaleza	2	5	7
RAO Attica	71	26	97
RAO Western Greece	5	1	6
RAO Thessaloniki	38	5	43
RAO Thrace	5	8	13
AAU Corinth	3	6	9
RAO Crete	6		6
AAU Kos	2	9	11
RAO Leros	1	6	7
RAO Lesvos	4	19	23
AAU Xanthi	2	3	5
RAO Piraeus	3	30	36
RAO Rhodes	5	7	12
RAO Samos	1	19	20
AAU Fylakio	4	1	5
RAO Chios	3	20	23
<b>Total</b>	<b>184</b>	<b>189</b>	<b>376</b>

Source: Asylum Service, 15 February 2018

The short term working status of almost half of the total number of the employees of the Asylum Service staff, coupled with the precarious working environment for employees, may create problems in the operation of the Asylum Service. For example, on 1 and 2 November 2017, the Asylum Service fixed-term employees went on a 48-hour nationwide strike due to payment delays and the termination of about 100 fixed-term contracts at the end of 2017.<sup>83</sup> In addition, between 5 and 21 March 2018, fixed-term staff have stopped providing their services (*επίσχεση εργασίας*) as they have remained unpaid for a period exceeding three months.<sup>84</sup> Consequently, as a number RAO such as **Lesvos** and **Samos** are mainly staffed with fixed-term employees, they have temporarily halted their operation.

Caseworkers of the Asylum Service responsible for examining applications and issuing decisions on asylum applications hold a degree in Law, Political Science or Humanities, while a number of caseworkers hold a postgraduate degree.<sup>85</sup> The European Asylum Support Office (EASO) provides methods and content for the training of staff. There is a combination of distance learning and attendance in person by trainers who are employees of the Asylum Service, certified by EASO. The

<sup>83</sup> Τα Νέα, '48ωρη απεργία των συμβασιούχων της Υπηρεσίας Ασύλου', 31 October 2017, available in Greek at: <http://bit.ly/2orTd5i>.

<sup>84</sup> The Press Project, 'Ξεκίνησαν επίσχεση εργασίας οι εργαζόμενοι της Υπηρεσίας Ασύλου', 7 March 2018, available in Greek at: <http://bit.ly/2ldZYzR>.

<sup>85</sup> Information provided by the Asylum Service, 15 February 2018.

basic units of the training seminar for new staff are:

- a. International protection's legal framework
- b. Interview techniques
- c. Evidence assessment
- d. Collection and evaluation of Country of Origin Information (COI).

Specific trainings for handling vulnerable cases are provided to a number of caseworkers. On June and December 2017, a number of 80 caseworkers of the Asylum Service have participated in a training dedicated on vulnerability issues. In 2017, 8 caseworkers of the Asylum Service have been certified by the EASO as trainees on the thematic field of "Human Trafficking" and "Interviewing Vulnerable Persons".

A number of meetings with external partners working with vulnerable persons also took place in 2017.<sup>86</sup> However, as all Asylum Service caseworkers are entitled to conduct interviews with all categories of applicants, including vulnerable persons, vulnerable cases may not be handled by staff specifically trained in interviewing vulnerable persons. As the Asylum Service notes, effort is made so that these cases are handled by specially trained caseworkers.<sup>87</sup>

Despite the growth of the Asylum Service mainly during 2016 and 2017, its capacity in 2018 should be further assessed given that the number of applications submitted before the Asylum Service remained significantly high, that further burdening of the Asylum Service caseworkers is not possible,<sup>88</sup> and that an important number of asylum applications are pending for a significant period, while the asylum interview has taken place only in 23% of the applications pending as of 31 January 2018.<sup>89</sup>

In this regard, it should be mentioned that in 2017 the number of applications submitted before the Asylum Service rose by 15%. Greece received the 8.5% of the total number of applications submitted in the EU, while it was the country with the largest number of asylum seekers per capita among EU Member States.<sup>90</sup>

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

Part III of L 4375/2016, as modified by L 4399/2016, transposes the provisions of Article 6 the recast Asylum Procedures Directive relating to access to the procedure. As outlined below, Greek law refers to registration (*καταγραφή*) to describe both the notion of "registration" and "lodging" of an application under the Directive.

#### Registration of applications ("*Καταγραφή*")

Applications for international protection are received and registered by the Regional Asylum Offices (RAO) and Asylum Units (AAU) and Mobile Asylum Units,<sup>91</sup> depending on their local jurisdiction.

The Asylum Service shall as soon as possible proceed to the "full registration" (*πλήρης καταγραφή*) of the asylum application,<sup>92</sup> following which an application is considered to be lodged (*κατατεθειμένη*).<sup>93</sup>

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<sup>86</sup> Information provided by the Asylum Service, 15 February 2018.

<sup>87</sup> *Ibid.*

<sup>88</sup> Asylum Service, 'The work of the Asylum Service in 2017', 25 January 2018, available at: <http://bit.ly/2BsCDGd>.

<sup>89</sup> Asylum Service, *Applications at first instance (end of January)*, 26 February 2018, available at: <http://bit.ly/2FoyV72>.

<sup>90</sup> Asylum Service, 'The work of the Asylum Service in 2017', 25 January 2018, available at: <http://bit.ly/2BsCDGd>.

<sup>91</sup> Articles 34(1)(id) and 36(1) L 4375/2016.

<sup>92</sup> Article 36(1)(a) L 4375/2016.

<sup>93</sup> Article 36(1)(c) L 4375/2016.

Where, however, “for whatever reason” full registration is not possible, following a decision of the Director of the Asylum Service, the Asylum Service may conduct a “basic registration” (απλή καταγραφή) of the asylum seeker’s necessary details within 3 working days, and then proceed to the full registration as soon as possible and by way of priority.<sup>94</sup>

According to the law, if the application is submitted before a non-competent authority, that authority is obliged to promptly notify the competent receiving authority and to refer the applicant thereto.<sup>95</sup> However, in practice in order for an asylum application to be properly lodged, the applicant should lodge an application in person before the Asylum Service.

For third-country nationals willing to apply for asylum while in detention or under reception and identification procedures, the detention authority or RIS registers the intention of the person on an electronic network connected with the Asylum Service, no later than within 6 working days. In order for the application to be fully registered, the detainee is transferred to the competent RAO or AU.<sup>96</sup>

The time limits of 3 or 6 working days respectively for the basic registration of the application may be extended to 10 working days in cases where a large number of applications are submitted simultaneously and render registration particularly difficult.<sup>97</sup>

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

No time limit is set by law for lodging an asylum application.<sup>98</sup> However, Article 42 L 4375/2016, which transposes Article 13 of the recast Asylum Procedures Directive that refers to applicants’ obligations, foresees in paragraph 1a that applicants are required to appear before competent authorities in person, without delay, in order to submit their application for international protection.<sup>99</sup>

Applications must be submitted in person,<sup>100</sup> except under *force majeure* conditions.<sup>101</sup>

For those languages that a Skype line is available, an appointment through Skype should be fixed before the person in question can present him or herself before the Asylum Service in order to lodge an application.

According to the latest decision of the Director of the Asylum Service issued on January 2018, the “asylum seeker’s card”, which is provided to all persons who have fully registered their application is valid for 6 months.<sup>102</sup> This Decision abolished the exception that was in place in 2017 under a previous decision, according to which all cards were valid for 6 months except for those provided to nationals of Albania, Georgia and Pakistan, which were only valid for a period of 2 months.<sup>103</sup>

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<sup>94</sup> Article 36(1)(b) L 4375/2016.

<sup>95</sup> Article 36(4) L 4375/2016.

<sup>96</sup> Article 36(3) L 4375/2016.

<sup>97</sup> Article 36(5) L 4375/2016.

<sup>98</sup> Article 39(1) L 4375/2016 provides that “[r]equests are not dismissed merely on the ground that they have not been submitted the soonest possible.”

<sup>99</sup> Article 42(1)(a) L 4375/2016.

<sup>100</sup> Article 36(2) L 4375/2016.

<sup>101</sup> Article 42(1)(a) L 4375/2016.

<sup>102</sup> Asylum Service Director Decision 868/2018 on the duration of validity of asylum seeker cards, Gov. Gazette B/201/30.1.2018.

<sup>103</sup> Asylum Service Director Decision 14720/2017 on the duration of validity of asylum seeker cards, Gov. Gazette B/3370/27.9.2017.

In total, the Asylum Service registered 58,661 asylum applications in 2017. Syrians continue to be the largest group of applicants with 16,396 applications. There has also been a substantial increase in applications from Turkish nationals (1,827 in 2017 compared to 189 in 2016).<sup>104</sup>

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

Difficulties with regard to access to the asylum procedure had already been observed since the start of the operation of the Asylum Service in 2013, in particular due to Asylum Service staff shortages and the non-operation of all RAO provided by law. A system for granting appointments for registration of asylum applications through Skype, inaugurated in 2014, did not solve the problem and thus access to the asylum procedure has remained one of the persistent major issues of concern for the Greek asylum system.

Without underestimating the important number of applications lodged in 2017 – 58,661 asylum applications about half of which were lodged at the mainland – access to asylum on the mainland continued to be problematic and intensified throughout 2017, considering especially that the number of people wishing to apply for asylum on the mainland remained high.

Two staff members of the Asylum Service together with an interpreter are dealing with the operation of the Skype application system on a daily basis.<sup>105</sup> The number of hours per week during which the Asylum Service Skype line is available has slightly increased in 2018.

As of February 2018, the Skype line is available for 25 hours per week for access to the RAO of **Attica, Alimos and Piraeus** and 21 hours per week for RAO outside Attica region, compared to a total of 20 and 18 hours respectively as of March 2017.

For example, as of February 2018, the RAO of Attica, Alimos and Piraeus are available via Skype for a total of 25 hours per week, as indicated below:<sup>106</sup>

- 4 hours per week for Dari and Farsi speakers;
- 6 hours per week for Arabic speakers;
- 1 hour per week for Syrians eligible for the fast-track procedure;
- 1 hour per week for English and French speakers;
- 3 hours per week for Urdu and Punjabi speakers;
- 2 hours per week for Bengali speakers;
- 1 hour per week for Albanian speakers;
- 1 hour per week for Sorani speakers;
- 1 hour per week for Kurmanji speakers;
- 1 hour per week for Georgian speakers.
- 2 hours per week for Pashto speakers.
- 1 hour per week for Russian speakers.
- 1 hour per week for Chinese speakers.

Despite this slight increase, however, available hours per week to access the Skype line remain limited. This hinders the access of persons willing to apply for asylum. Consequently, prospective asylum seekers frequently have to try multiple times, often over a period of several months, before they manage to get through the Skype line and to obtain appointment for the registration of their application, all the while facing the danger of a potential arrest and detention by the police.

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<sup>104</sup> *Ibid.*

<sup>105</sup> Information provided by the Asylum Service, 15 February 2018.

<sup>106</sup> Asylum Service, *Registration Schedule*, 5 February 2018, available at: <http://bit.ly/2FstG2p>.

As noted by UNHCR, the Skype appointment system “process presents serious deficiencies due to limited capacity and availability of interpretation but also because applicants cannot always have access to the internet.”<sup>107</sup>

As also noted by the Greek Ombudsman in January 2018, following a complaint submitted by GCR on behalf of a number of a family from Iran, a family from Iraq and a woman from Syria who could not gain access to asylum through Skype:

“Due to the large number of applications and the objective technical difficulties of the specific medium, the way that Skype is used by [the Asylum] Service, instead of being part of the solution has become part of the problem of access to asylum. (Special Report, “Migration flows and refugee protection”, April 2017.) The Independent Authority has reported extensively in the past on the problems of accessing exclusively through Skype and has evaluated this specific practice to be a restrictive system that seems to be in contrast with the principle of universal, continuous and unobstructed access to the asylum procedure (Annual Reports 2015, 2016 and 2017.) Since this problem intensifies over time, the Greek Ombudsman is receiving numerous complaints concerning the inability of access to asylum despite the repeated efforts to connect with a line in Athens as well as in Thessaloniki.”<sup>108</sup>

Following the pre-registration through Skype, registration is scheduled within 81 days on average.<sup>109</sup> GCR has been made aware of cases where the full registration of the asylum application took place more than 6 months after the Skype pre-registration. This was for example the case of a Syrian woman with three minor children who had been pre-registered in November 2016 and her application was fully registered in June 2017.<sup>110</sup>

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

Access to the asylum procedure for persons detained for the purpose of removal is also highly problematic. The application of a detained person having expressed his or her will to apply for asylum is registered only after a certain period of time. During the time lapse between the expression of the intention to seek asylum and the registration of the application, the asylum seeker remains detained by virtue of a removal order and is deprived of any procedural guarantees provided to asylum seekers, despite the fact that according to Greek law, “the person who expresses his/her intention to submit an application for international protection is an asylum seeker.”<sup>111</sup> Since the waiting period between expression of intention and registration is not counted in the [Duration of Detention](#), asylum seekers may be detained for a total period exceeding the maximum 3-month detention time limit.<sup>112</sup>

The time period between the expression of intention to apply for asylum and the registration of the claim varies depending the circumstances of each case, and in particular the capacity of the competent authority and the number of people willing to apply for asylum from detention. For example, according to GCR’s experience, in February 2018, an average period ranging from 2 weeks to 1 month was needed for the registration of an application for a person detained in the **Amygdaleza** pre-removal centre. Respectively in **Corinth** this period is reported to be much longer, even exceeding 3 months for specific nationalities such as Pakistan or Afghanistan.

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<sup>107</sup> UNHCR, *Explanatory Memorandum pertaining to UNHCR’s submission to the Committee of Ministers of the Council of Europe on developments in the management of asylum and reception in Greece*, May 2017, available at: <http://bit.ly/2BbSrAA>, 2.

<sup>108</sup> Ombudsman, Document No 233356/1616/2018, 12 January 2018, on file with the author.

<sup>109</sup> Information provided by the Asylum Service, 15 February 2018.

<sup>110</sup> Case number on file with the author.

<sup>111</sup> Article 36(3) L 4375/2016.

<sup>112</sup> UNHCR, *Explanatory Memorandum pertaining to UNHCR’s submission to the Committee of Ministers of the Council of Europe on developments in the management of asylum and reception in Greece*, May 2017, available at: <http://bit.ly/2BbSrAA>, 10.

According to the Asylum Service, 5,424 persons applied from pre-removal detention centres in 2017.<sup>113</sup>

## C. Procedures

### 1. Regular procedure

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

##### Indicators: Regular Procedure: General

- |  |   |
|--|---|
| 1. Time limit set in law for the determining authority to make a decision on the asylum application at first instance:     | 6 months  |
| 2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Backlog of pending cases at first instance as of 31 December 2017:  | 36,340  |

The exact number of applications processed under the regular procedure is not available, although 26,327 applications out of a total 58,661 were subject to the [Fast-Track Border Procedure](#) in 2017. According to the Asylum Service, “the vast majority of the remaining applications were examined under the regular procedure.”<sup>114</sup>

According to national legislation, an asylum application should be examined as “the soonest possible” and, in any case, within 6 months, in the framework of the regular procedure.<sup>115</sup> This time limit may be extended for a period not exceeding a further 9 months, where:<sup>116</sup>

- (a) Complex issues of fact and/or law are involved; or
- (b) A large number of third country nationals or stateless persons simultaneously apply for international protection.

A further extension of 3 months is also provided “where necessary due to exceptional circumstances and in order to ensure an adequate and complete examination of the application for international protection.”<sup>117</sup>

Where no decision is issued within the maximum time limit fixed in each case, the asylum seeker has the right to request information from the Asylum Service on the timeframe within which a decision is expected to be issued. As expressly foreseen in the law, “this does not constitute an obligation on the part of the Asylum Service to take a decision within a specific time limit.”<sup>118</sup>

Decisions granting status are given to the person of concern in extract which does not include the decision’s reasoning. According to Article 41(1)(f) L 4375/2016, in order for the entire decision to be delivered to the person recognised as a beneficiary of international protection, a special legitimate interest (*ειδικό έννομο συμφέρον*) should be proven by the person in question. If a special legitimate interest is not proven, the Asylum Service refuses to deliver the entire decision in practice.<sup>119</sup>

<sup>113</sup> Information provided by the Asylum Service, 15 February 2018.

<sup>114</sup> Information provided by the Asylum Service, 15 February 2018.

<sup>115</sup> Article 51(2) L 4375/2016.

<sup>116</sup> Article 51(3) L 4375/2016.

<sup>117</sup> Article 51(4) L 4375/2016.

<sup>118</sup> Article 51(5) L 4375/2016.

<sup>119</sup> Asylum Service, Document no 34200/15.9.2016 “Request for a copy”.

## Duration of procedures

Following the significant increase of asylum applications lodged in 2016 and 2017, the examination of asylum applications in due time is a matter of concern. An important number of applications has been pending for a period exceeding 6 months, while in the majority of these cases the [Personal Interview](#) has not taken place yet. As highlighted by UNHCR in May 2017:

“Despite undeniable improvements, there is a significant number of pending cases... and first instance examination for some applicants could last up to two years. While processing times may vary depending on location, some of those asylum-seekers who currently lodge their applications in the largest regional asylum office (Attica), may have their interview scheduled for as late as autumn 2018.”<sup>120</sup>

The average processing time at first instance is reported at approximately 6 months as of December 2017.<sup>121</sup> However, the actual duration of the first instance procedure is much longer if the delay between pre-registration and [Registration](#) of the application, on average 81 days, is taken into consideration.<sup>122</sup>

According to the Asylum Service, the average processing time at first instance was 6 months as of December 2017.<sup>123</sup> A total of 36,340 applications were pending at the end of the year:

Pending applications at first instance from full registration: 31 December 2017	
Length of pending procedure	Number
< 6 months	24,905
6-9 months	4,146
9-12 months	3,237
> 12 months	4,052
<b>Total</b>	<b>36,340</b>

Source: Asylum Service, 15 February 2018.

Accordingly, almost one out of three applications was pending for more than 6 months from the day of full registration.

Cases pending for over a year involved for example an Iranian applicant, whose interview took place in June and July 2016 and the decision was still pending at the end of 2017. Similarly, the claim of an Iraqi applicant was examined in October 2016 and the decision was still pending at the end of 2017.<sup>124</sup>

Moreover, out of a total of 37,434 applications pending in 31 January 2018, the personal interview had not yet taken place in 74.1% of cases.<sup>125</sup>

As far as GCR is aware, personal interviews may initially be set approximately a year after full registration, or sometimes over a year following the full registration of an application. A rescheduled appointment following a cancelled interview is usually set within 1 to 2 months, although there have

<sup>120</sup> UNHCR, *Explanatory Memorandum pertaining to UNHCR's submission to the Committee of Ministers of the Council of Europe on developments in the management of asylum and reception in Greece*, May 2017, available at: <http://bit.ly/2BbSrAA>, 2.

<sup>121</sup> Information provided by the Asylum Service, 15 February 2018.

<sup>122</sup> *Ibid.*

<sup>123</sup> *Ibid.*

<sup>124</sup> Case numbers on file with the author.

<sup>125</sup> Asylum Service, *Applications at first instance (end of January)*, 26 February 2018, available at: <http://bit.ly/2FoyV72>.



been cases of delayed rescheduling as well. Taking into consideration the number of applications pending for more than 6 months, the number of applications pending without an interview being scheduled (74.1%) and the scheduling of personal interviews approximately one year or more following full registration, the backlog of cases pending for prolonged periods is likely to increase in the future.

## 1.2. Prioritised examination and fast-track processing

Article 51(6) L 4375/2016 provides that an application may be registered and examined by way of priority for persons who:

- (a) Belong to vulnerable groups or are in need of special procedural guarantees;
- (b) Apply from detention, at the border or from a Reception and Identification Centre;
- (c) Are likely to fall within the Dublin procedure;
- (d) Have cases reasonably believed to be well-founded;
- (e) Have cases which may be considered as manifestly unfounded;
- (f) Represent a threat to national security or public order; or
- (g) File a [Subsequent Application](#).

Moreover, a fast-track procedure for the examination and the granting of refugee status to Syrian nationals and stateless persons with former habitual residence in Syria, is in place since September 2014.<sup>126</sup> In 2017, a total of 2,986 positive decisions were issued in the framework of the Syria fast-track procedure,<sup>127</sup> compared to 913 in 2016.<sup>128</sup>

## 1.3. Personal interview

### Indicators: Regular Procedure: Personal Interview

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

A personal interview with the applicant may be omitted where:<sup>129</sup>

- (a) The Asylum Service is able to take a positive decision on the basis of available evidence;
- (b) It is not practically feasible, in particular when the applicant is declared by a medical professional as unfit or unable to be interviewed due to enduring circumstances beyond their control. In practice, the applicants themselves or usually their legal advisor, if there is one, must collect and submit such a certificate.

When the applicant or, where applicable, a family member of the applicant is not provided with the opportunity of a personal interview due to their being unfit or unable to be interviewed, as mentioned above, the Police or Asylum Service shall “make reasonable efforts” to provide them with the possibility to submit supplementary evidence.<sup>130</sup> The omission of a personal interview does not adversely affect the decision on the application, as long as the decision states the reasons for omitting the interview.<sup>131</sup>

<sup>126</sup> For more details, see AIDA, Country Report Greece, Fourth Update, November 2015, 36.

<sup>127</sup> Information provided by the Asylum Service, 15 February 2018.

<sup>128</sup> Information provided by the Asylum Service, 9 February 2017.

<sup>129</sup> Article 52(8) L 4375/2016.

<sup>130</sup> Article 52(9) L 4375/2016.

<sup>131</sup> Article 52(10) L 4375/2016.



The law provides that reasonable time shall be provided to the applicant to prepare for the interview, if he or she so requests.<sup>132</sup>

As mentioned in [Regular Procedure: General](#), significant delays occurred in 2017 with regard to the scheduling of interviews. In a number of cases, interviews were set approximately one year after the registration of the application, while rescheduled interviews were generally set within 1 to 2 months later. GCR is aware of several such cases, including cases of vulnerable applicants. These include:<sup>133</sup>

- The case of a Syrian family who was exempted from the [Fast-Track Border Procedure](#) due to vulnerability and transferred from **Chios** to **Athens**. Their application was registered in June 2017 and their interview was scheduled for January 2019.
- In a similar case of a vulnerable Syrian family exempted from the fast-track border procedure and transferred from **Lesvos** to **Athens**, the application was registered on October 2017, while their interview is scheduled for an interview on February 2019.
- An applicant from Cameroon is scheduled to be interviewed in April 2019, 16 months after his registration.
- The interview of a woman from Pakistan registered in March 2017 was scheduled for February 2018.

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

Only Asylum Service caseworkers can conduct interviews in the regular procedure, as opposed to the [Fast-Track Border Procedure: Personal Interview](#). In case of applications referred from the fast-track border procedure to the regular procedure following an interview held by an EASO officer (e.g. due to vulnerability), a supplementary first instance interview is conducted by an Asylum Service's caseworker.<sup>134</sup>

However, GCR is aware of cases where, albeit referred to the regular procedure, no interview with an Asylum Service caseworker took place and thus the only interview conducted before the issuance of the first instance decision was done by an EASO officer. This is for example the case of a woman from the Democratic Republic of Congo referred to the regular procedure due to vulnerability. No supplementary interview took place by an Asylum Service caseworker and the first instance decision by which the application was rejected on the merits was issued by solely relying on the EASO interview and recommendation. The case is now pending at second instance.<sup>135</sup>

Media reports in 2018 referred to a bill pending submission to Parliament which would foresee the involvement of EASO personnel in the regular procedure.<sup>136</sup> Reservations on the lawfulness and quality of interviews conducted by EASO in the fast-track border procedure should be given due consideration prior to such a reform.

The personal interview takes place without the presence of the applicant's family members, unless the competent Asylum Service Officer considers their presence necessary.<sup>137</sup> The personal interview must take place under conditions ensuring appropriate confidentiality.<sup>138</sup> However, GCR has observed concerns relating to confidentiality in certain RAO or AAU due to the lack of appropriate spaces. This is for example the case in the RAO of **Chios** and **Leros**, where the office used for the interview cannot guarantee confidentiality.

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<sup>132</sup> Article 52(5) L 4375/2016.

<sup>133</sup> Case numbers on file with the author.

<sup>134</sup> Information provided by the Asylum Service, 15 February 2018.

<sup>135</sup> Decision on file with the author.

<sup>136</sup> AMNA, 'Υπάρχουν στοιχεία που δεν κερδήθηκαν, λέει η απελθούσα διευθύντρια της Υπηρεσίας Ασύλου', 8 February 2018, available in Greek at: <http://bit.ly/2Hgplu3>.

<sup>137</sup> Article 52(11) L 4375/2016.

<sup>138</sup> Article 52(12) L 4375/2016.

The person conducting the interviews should be sufficiently qualified to take into account the personal or general circumstances regarding the application, including the applicant's cultural origin. In particular, the interviewer must be trained concerning the special needs of women, children and victims of violence and torture.<sup>139</sup> As stated in [Registration](#), not all caseworkers dealing with vulnerable persons are specifically trained in interviewing vulnerable persons and efforts are made to ensure that such cases are handled by certified caseworkers.<sup>140</sup>

### Quality of interviews and decisions

Without underestimating the fact that the recognition rate of the first instance procedure remains high, at 46% of in-merit decisions issued in 2017,<sup>141</sup> issues relating to the quality of first instance decisions remain a matter of concern. According to UNHCR:

“In spite of improvements in the quality of first instance decisions, maintaining and further improving the procedure remains a concern. New and sometimes inexperienced and insufficiently trained staff hired to respond to the emergency have been an issue. Ongoing pressures in the admissibility, relocation, Dublin, and regular procedures to shorten processing times, are another concern. The quality and legal departments of the Asylum Service have had to primarily focus on managing the border procedures on the islands and the large training needs of new staff. The support provided by EASO mostly in the relocation and admissibility procedures, but also in terms of training and country-of-origin (COI) material, is valuable, but more support is needed to address the multiple and increased needs of the Asylum Service.”<sup>142</sup>

GCR is aware of a number of first instance cases where the assessment of the asylum claims and/or the decisions delivered raise issues of concern.

Among others, these concern the use of outdated COI. This was for example the case concerning an Afghan applicant for whom, in the context of examining the conditions for subsidiary protection, the security situation in the capital of Afghanistan was assessed based on COI dating back to 2013. In the same case, the assessment of the overall security situation in Afghanistan was wrongly based on COI referring to the area of Kashmir in Pakistan, dating back to 2012. The application was lodged at the end of 2016 and the decision was issued in September 2017.<sup>143</sup>

Furthermore, GCR is aware of cases where first instance decisions have omitted the mental / psychological situation of the applicant even where supported by medical documents or allegations of ill-treatment and torture, or present deficiencies with regard to the assessment of claims based on sexual orientation and claims by unaccompanied children (see [Special Procedural Guarantees](#)).

### Interpretation

The law envisages that an interpreter of a language understood by the applicant be present in the interview.<sup>144</sup> The use of remote interpretation has been observed especially in distant Regional Asylum Offices and Asylum Units. The capacity of interpretation services remains challenging.<sup>145</sup>

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<sup>139</sup> Article 52(13)(a) L 4375/2016.

<sup>140</sup> Information provided by the Asylum Service, 15 February 2018. The EU-28 first instance recognition rate in 2017 was 45.54% (including decisions on humanitarian grounds): Eurostat, *First instance decisions on asylum applications by type of decision - annual aggregated data*, available at: <https://bit.ly/21vghK8>.

<sup>141</sup> Information provided by the Asylum Service, 15 February 2018.

<sup>142</sup> UNHCR, *Explanatory Memorandum pertaining to UNHCR's submission to the Committee of Ministers of the Council of Europe on developments in the management of asylum and reception in Greece*, May 2017, 3.

<sup>143</sup> Decision on file with the author.

<sup>144</sup> Article 52(3) L.4375/2016.

## Recording and transcript

The law envisages audio recording of the personal interview. A detailed report is drafted for every personal interview, which includes the main arguments of the applicant for international protection and all its essential elements. Where the interview is audio recorded, the audio recording accompanies the report. For interviews conducted by video-conference, audio recording is compulsory. Where audio recording is not possible, the report includes a full transcript of the interview and the applicant is invited to certify the accuracy of the content of the report by signing it, with the assistance of the interpreter who also signs it, where present.<sup>146</sup>

Before personal interviews were audio recorded, the caseworker would read back the full transcript to the applicant in order for him or her to approve its content and sign it. As of April 2014, all interviews are audio-recorded. Ever since audio-recording came into play, the caseworker still writes down a full transcript of the interview, but does not read its content back to the applicant. The applicant may at any time request a copy of the transcript, a copy of the audio file or both.<sup>147</sup>

### 1.4. Appeal

#### Indicators: Regular Procedure: Appeal

1. Does the law provide for an appeal against the first instance decision in the regular procedure?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Judicial	<input checked="" type="checkbox"/> Administrative
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

  - ❖ If yes, is it
  - ❖ If yes, is it suspensive
2. Average processing time for the appeal body to make a decision: Not available

A threefold procedural framework remained in place by the end of 2017 for the examination of appeals against negative decisions. Appeals submitted after 21 July 2016, i.e. the operation of the new Independent Appeals Committees under the Appeals Authority, are examined by said Committees. Appeals against decisions on applications lodged before 7 June 2013, i.e. before the operation of the Asylum Service, and appeals submitted between 3 April 2016 and 21 July 2016 are examined by the so-called “Backlog Committees” under PD 114/2010. Appeals submitted before 3 April 2016 against decisions rejecting applications for international protection lodged after 7 June 2013 should be examined by the Appeals Committees operating until 25 September 2015, which should be re-established under a Ministerial Decision with the same composition they had until that date.<sup>148</sup>

#### 1.4.1. Applications lodged after 21 July 2016

### The Appeals Authority

The legal basis for the establishment of the Appeals Authority was amended twice in 2016 by L 4375/2016 in April 2016 and L 4399/2016 in June 2016, and then in 2017 by L 4461/2017.

The 2016 amendments, highly linked with the EU-Turkey statement, have been introduced following reported pressure on the Greek authorities by the EU with regard to the implementation of the EU-

<sup>145</sup> UNHCR, *Explanatory Memorandum pertaining to UNHCR’s submission to the Committee of Ministers of the Council of Europe on developments in the management of asylum and reception in Greece*, May 2017, 3.

<sup>146</sup> Article 52(14)-(15) L 4375/2016.

<sup>147</sup> Article 52(16) L 4375/2016.

<sup>148</sup> Joint Ministerial Decision 9541/2014, Gazette 2692/B/09-10-2014.

Turkey statement,<sup>149</sup> and “coincide with the issuance of positive decisions of the – at that time operational – Appeals Committees (with regard to their judgment on the admissibility) which, under individualised appeals examination, decided that Turkey is not a safe third country for the appellants in question”,<sup>150</sup> as highlighted by the National Commission on Human Rights regarding L 4399/2016.

L 4375/2016 provided the establishment of a new Appeals Authority, as a separate structure (*αυτοτελής υπηρεσία*) under the Minister of Interior and Administrative Reconstruction,<sup>151</sup> now under the Minister for Migration Policy. L 4399/2016 introduced *inter alia* a modification of the composition of the Appeals Committees and a restriction to the right of the appellant to request an oral hearing before the Appeals Committees. In particular, the amended Article 5(3) L 4375/2016 provides that new three-member Independent Appeals Committees (*Ανεξάρτητες Αρχές Προσφυγών*) will be established under the Appeals Authority. These Committees are established with the participation of two active Administrative Judges and one member holding a university degree in Law, Political or Social Sciences or Humanities with specialisation and experience the fields of international protection, human rights or international or administrative law.<sup>152</sup> The term of the Committee members is three years, instead of the previously foreseen five-year term.<sup>153</sup>

L 4661/2017 further foresees that “in case of a large number of appeals”, the Appeals Committees may be assisted by “rapporteurs” provided by EASO.<sup>154</sup> According to the amendment, the rapporteurs will have access to the file and will be entrusted with the drafting of a detailed and in-depth report, that will contain a record and edit of the facts of the case along with the main claims of the appellant, as well as a matching of said claims (*αντιστοίχιση ισχυρισμών*) with the country of origin information that will be presented before the competent Committee in order to decide. This amendment echoes the recommendation made under the December 2016 Joint Action Plan for the Implementation of the EU-Turkey Statement for “the Appeal Committees to increase the number of decisions per committee through: a) the use of legal assistance in drafting decisions”.<sup>155</sup> Concerns have been raised by civil society organisations regarding the compliance of this amendment with the guarantees of independence and impartiality of the Appeals Committees.<sup>156</sup>

The involvement of judicial officials in the composition of the Appeals Committees, an administrative body, *inter alia* raised questions of constitutionality and compliance with the right to an effective remedy.<sup>157</sup> With a Public Statement as of 17 July 2016, the National Commission for Human Rights, expressed its concern about the composition of those proposed Appeals Committees, as issues of constitutionality may arise regarding the participation of two administrative judges in each three-member Appeal Committee...The Constitution since 1.1.2002 prohibits administrative tasks from being entrusted to magistrates in order for their personal and operational independence to be maintained... The Council of State has ruled on the unlawful establishment (*μη νόμιμη συγκρότηση*) of Committees with the participation of magistrates. With a constant case law [the Council of State] has ruled that those are not a judicial body, given that they decide on administrative appeals (*ενδικοφανής προσφυγή*) against

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<sup>149</sup> New Europe, ‘EU Council: Why Greece should consider Turkey safe for Syrian refugees’, 9 June 2016, available at: <http://bit.ly/2lWDYOa>; Keep Talking Greece, ‘EU presses Greece to change asylum appeal committees that consider “Turkey is not a safe country”’, 11 June 2016, available at: <http://bit.ly/2kNWR5D>.

<sup>150</sup> NCHR, Public Statement regarding the amendment of the composition of the Independence Appeals Committees, 17 June 2016, available at: <http://bit.ly/2k1Buhz>. Unofficial translation by the author.

<sup>151</sup> Article 4 L 4375/2016.

<sup>152</sup> The third member is appointed by UNHCR or the National Commissioner for Human Rights if UNHCR is unable to appoint one. If both are unable, the (now) Minister for Migration Policy appoints one.

<sup>153</sup> Article 5(3)(f) L 4375/2016, as amended by L 4399/2016.

<sup>154</sup> Article 5(6) L 4375/2016, as inserted by Article 101 L 4461/2017.

<sup>155</sup> European Commission, *Joint action plan on the implementation of the EU-Turkey Statement*, Annex to COM (2016) 792, 8 December 2016, para 9.

<sup>156</sup> Asylum Campaign, ‘Σχετικά με την προτεινόμενη τροπολογία στο Ν. 4375/2016’, 15 March 2017, available in Greek at: <http://bit.ly/2EBt7DX>.

<sup>157</sup> ECRE, ‘Greece amends its asylum law after multiple Appeals Board decisions overturn the presumption of Turkey as a “safe third country”’, 24 June 2016, available at: <http://bit.ly/28RnTqO>.

administrative decisions.”<sup>158</sup> The Council of State rejected applications for annulment brought against this reform, considering *inter alia* that the presence of judges in the Appeals Committees is in line with the Constitution as the Appeals Committees exercise judicial powers.<sup>159</sup> As noted by the National Commission for Human Rights, the decisions of the Council of State “[do] not to apply its previous firm relevant jurisprudence, according to which these Committees do not constitute a judicial body, given the fact that they decide on administrative appeals (*ενδικοφανείς προσφυγές*) against administrative acts without elements similar to the performance of judicial task and exercise of competence of a judicial body, such as the publicity of the hearings and the obligation to guarantee adversarial proceedings.”<sup>160</sup>

Apart from constitutionality issues raised regarding the participation of active Administrative Judges in the Appeals Committees, a number of active Administrative Judges participating in the Appeals Committees also sit in the Administrative Courts of Appeal, competent to examine applications for annulment against second instance negative decisions.

In January 2017, the 7<sup>th</sup> Independent Appeals Committee accepted a request for exemption of one of its members, on the ground that “a suspicion of partiality is likely to be created to the appellant regarding his case, despite the fact that this does not correspond to reality.”<sup>161</sup> The case concerned the 8 Turkish servicemen who fled Turkey after the failed coup d’état attempt and applied for asylum in Greece in July 2016. In December 2017, one of the eight servicemen was granted refugee status with a Decision issued by the 3<sup>rd</sup> Appeals Committee. This decision has been appealed by the Minister of Migration Policy with an application for annulment, an application for suspension and a request for an interim order (*προσωρινή διαταγή*) lodged before the Administrative Court of Appeal of Athens. The President of the Administrative Court entrusted with the examination of the request for an interim order had also participated as President of the 7<sup>th</sup> Independent Appeals Committee, which dealt with the appeal against the first instance asylum decision of another appellant of the eight servicemen. On 8 January 2018, with a decision of the President of the Administrative Court of Athens, the request for interim order was accepted and temporarily suspended the decision of the 3<sup>rd</sup> Appeals Committee. After the issuance of the judicial decision, and by invoking a number of comments on the press, the President of the 7<sup>th</sup> Appeals Committee and President of the Administrative Court had asked to be exempted from the composition of the 7<sup>th</sup> Appeals Committee and the request had been accepted on 16 January 2018. On 12 January 2018, the judge also asked to be exempted from the composition of the court examining the application for annulment and the application for suspension, which has also been accepted.<sup>162</sup>

12 Independent Appeals Committees are operational as of February 2018.<sup>163</sup> The first five Independent Appeals Committees started functioning on 21 July 2016,<sup>164</sup> while seven more Committees were established and started functioning on 14 December 2016.<sup>165</sup> In addition, one Appeals Committee substitutes other Committees in case they cannot operate.<sup>166</sup> Following the amendment introduced by L 4661/2017, 22 rapporteurs were made available to the Appeal Authority, of whom twelve were deployed to the Appeals Authority by EASO by September 2017.<sup>167</sup>

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<sup>158</sup> NCHR, ‘Public Statement regarding the amendment of the composition of the Independence Appeals Committees’, 17 June 2016, available at: <http://bit.ly/2k1Buhz>. Unofficial translation by the author.

<sup>159</sup> Council of State, Decisions 2347/2017 and 2348/2017, 22 September 2017, available in Greek at: <http://bit.ly/2Fkxmno>.

<sup>160</sup> NCHR, *Report on the condition of Reception and Asylum system in Greece*, 22 December 2017, available at: <http://bit.ly/2nkf1P0>.

<sup>161</sup> 7<sup>th</sup> Independent Appeals Committee, Decision 1197/2018, 16 January 2018, available in Greek at: <http://bit.ly/2CKW7q4>.

<sup>162</sup> Administrative Court of Appeal of Athens, Decision 144/2018, 29 January 2018.

<sup>163</sup> Information provided by the Appeals Authority, 6 February 2018.

<sup>164</sup> Joint Ministerial Decision 3006/2016, Gazette YΟΔΔ 392/20-07-2016.

<sup>165</sup> Joint Ministerial Decision, Gazette YΟΔΔ 683/14-12-2016.

<sup>166</sup> European Commission, *Seventh Report on the Progress made in the implementation of the EU-Turkey Statement*, COM(2017) 470, 6 September 2017.

<sup>167</sup> *Ibid.*



A total of 11,632 appeals were lodged to the Independent Appeals Committees in 2017. 4,368 appeals were pending at the end of the year, of which 3,050 had been examined but the issuance of the decision was pending.<sup>168</sup>

Appeals before the Independent Appeals Committees: 2017		
Nationality	Appeals lodged	Appeals examined and pending decision
Pakistan	4,852	962
Albania	1,490	337
Syria	962	446
Bangladesh	858	171
Other	3,740	1,134
<b>Total</b>	<b>11,632</b>	<b>3,050</b>

Source: Appeals Authority, 6 February 2018.

The Independent Appeals Committees took 7,455 decisions in 2017, of which 4,354 decisions on the merits:

Decisions on the merits by the Independent Appeals Committees: 2017			
Refugee status	Subsidiary protection	Humanitarian protection	Rejection
<b>80</b>	<b>43</b>	<b>154</b>	<b>4,077</b>
Afghanistan: 11	Afghanistan: 13	Albania: 38	Pakistan: 2,040
Pakistan: 9	Iraq: 5	Pakistan: 28	Albania: 443
Syria: 7	Ukraine: 4	Georgia: 22	Bangladesh: 373
Iran: 7	Iran: 4	Armenia: 8	Algeria: 239
Nigeria: 6	Mali: 3	Egypt: 8	Georgia: 161
Palestine: 6	Cameroon: 3	Lebanon: 7	Egypt: 101
Iraq: 4	DRC: 3	Algeria: 5	Morocco: 92
DRC: 4	Pakistan: 2	Morocco: 4	Afghanistan: 73
Cameroon: 3	Guinea: 2	Bangladesh: 4	Nigeria: 69
Ghana: 3	Somalia: 1	Iran: 4	Cameroon: 62
Others: 20	Others: 3	Others: 26	Others: 424

Source: Appeals Authority, 6 February 2018.

The remaining 3,101 decisions taken by the Appeals Committees concerned inadmissible applications and appeals filed after the expiry of the deadline. A total of 401 decisions were issued following an appeal against a first instance inadmissibility decision based on the **Safe Third Country** concept.<sup>169</sup>

The launch of the operation of the Independent Appeals Committees after L 4399/2016 has led to a significant drop in the second instance recognition rate of international protection, which has been highly criticised by a number of actors, including the Athens Bar Association.<sup>170</sup> As already mentioned, there has been a glaring discrepancy between appeal recognition rates under the Appeals Committees

<sup>168</sup> Information provided by the Appeals Authority, 6 February 2018.

<sup>169</sup> Information provided by the Appeals Authority, 6 February 2018.

<sup>170</sup> Athens Bar Association, 'Επιτροπή για θέματα Προσφύγων και Μεταναστών: Άσυλο, προβλήματα στη λειτουργία των Επιτροπών Προσφυγών και ανάγκη μεγαλύτερης αξιοποίησης των δικηγόρων', 21 September 2017, available in Greek at: <http://bit.ly/2orUlpv>.

following L 4399/2016 and the outcome of the second instance procedure of the previous years. Between 21 July and 31 December 2016, the recognition rate was no more than 1% of the total number of the decisions issued (0.37% refugee status, 0.07% subsidiary protection, while 0.67% of the second instance decisions referred the case for humanitarian protection). The respective second instance recognition rate was 15.9% in 2015 (11.2% refugee status, 4.7% subsidiary protection) and 16.1% in 2014 (11.1% refugee status, 5% subsidiary protection).<sup>171</sup>

In 2017, despite a slight increase in recognition rates, these remain significantly low compared to rates prior to L 4399/2016 and to average EU28 second instance rates, which may underline a failure to provide an effective remedy under Articles 3 and 13 ECHR. Out of the total in-merit decisions issued in 2017, the international protection rate was 2.83% (1.84% granted refugee status, 0.99% subsidiary protection), 3.54% referred the case for humanitarian protection, and 93.63% were negative.

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

An applicant may lodge an appeal before the Appeals Authority against the decision rejecting the application for international protection as unfounded under the regular procedure, as well as against the part of the decision that grants subsidiary protection for the part rejecting refugee status, within 30 days from the notification of the decision. In cases where the appeal is submitted while the applicant is in detention, the appeal should be lodged within 15 days from the notification of the decision.<sup>172</sup>

Appeals before the Appeals Authority have automatic suspensive effect. The suspensive effect covers the period “during the time limit provided for an appeal and until the notification of the decision on the appeal.”<sup>173</sup>

On 14 November 2017, the General Commission of State for the Administrative Courts, a separate branch of senior judges responsible for monitoring and controlling the operation of the regular administrative courts, for assisting them in their task formulating opinions on issues of administrative legislation of general interest, proposed legislative amendments for the acceleration of the appeal procedure.<sup>174</sup> Among others, it suggested the possibility to present new elements before the Committee only if these are connected with new pieces of evidence and the omission of potential dissenting opinions if they are not delivered to the President within 5 days from the examination of the appeal

As a rule, the procedure before the Appeals Committee is a written and the examination of the appeal is based on the elements of the case file without the presence of the appellant. However, the Appeals Committee must invite the appellant to an oral hearing when:<sup>175</sup>

- (a) The appeal is lodged against a decision which withdraws the international protection status (see [Cessation and Withdrawal](#));
- (b) Issues or doubts are raised relating to the completeness of the appellant’s interview at first instance;
- (c) The appellant has submitted substantial new elements; or
- (d) The case presents particular complexity.

It should be mentioned that the initial version of Article 62(1) L 4375/2016 required the Committees to invite the appellant also in the case where he or she had submitted a relevant request at least 2 days

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<sup>171</sup> AIDA, Country Report Greece, 2016 Update, March 2017, 42-43.

<sup>172</sup> Article 61(1)(a)-(b) L 4375/2016, as amended by L 4399/2016.

<sup>173</sup> Article 61(4) L 4375/2016, as amended by L 4399/2016.

<sup>174</sup> General Commission of the State for the Regular Administrative Courts, ‘Proposals regarding the acceleration of the asylum procedure’, No 3089, 14 November 2017, available in Greek at: <http://bit.ly/2rYpmpk>.

<sup>175</sup> Article 62(1) L 4375/2016, as amended by L 4399/2016.

before the examination of the appeal.<sup>176</sup> This provision was abolished with the amendment of the law in June 2016.<sup>177</sup> It is disputed whether this amendment is in line with Greece's obligations under Article 47 of the EU Charter of Fundamental Rights.<sup>178</sup>

According to the law, the Appeals Committee must reach a decision on the appeal within 3 months when the regular procedure is applied.<sup>179</sup> In practice, however, processing times are significantly longer and far beyond the 3-month deadline in some cases. A total of 4,368 appeals were pending at the end of 2017.<sup>180</sup>

If the Appeals Committee rejects the appeal on the application for international protection and considers that there are one or more criteria fulfilled for a residence permit on humanitarian grounds, the case is referred to the relevant authority which decides on the granting of such a permit.<sup>181</sup> As mentioned above, 154 cases (3.54%) have been referred in 2017.

#### 1.4.2. Backlog Committees: Applications lodged before 7 June 2013

Appeals Committees established by PD 114/2010 ("Backlog Committees") are competent to examine appeals against decisions rejecting applications lodged before 7 June 2013.

Appeals Committees are established following a Ministerial Decision of the Minister of Interior. Contrary to the Independent Appeals Committees, each Backlog Committee consists of:

- (a) An official of a Ministry or a legal person under the supervision of a Ministry, including officials of municipalities authorities, holding a law degree, or former judge or former public servant granted with a law university degree, acting as the President of the Committee;
- (b) A representative of UNHCR, or a person who holds Greek citizenship, appointed by UNHCR;
- (c) A jurist specialised in refugee and human rights law, appointed by the relevant Ministry from a list drawn by the National Commission for Human Rights.

The chair and the members of the Appeal Committees are full-time employees. Each Committee is provided with support by a secretariat consisting of 5 duly qualified staff members from the relevant Ministry in full-time capacity.

Under Ministerial Decision 5401/3-156958 issued in August 2016,<sup>182</sup> 20 Backlog Committees were (re)established with a term up to 31 December 2016, extended until mid-2017.<sup>183</sup> In May 2017, 16 Backlog Committees remained active under a new Ministerial Decision,<sup>184</sup> while by the end of 2017 their term had expired and not been renewed at the time of writing, despite the fact that the examination of 470 appeals was pending by the end of 2017.<sup>185</sup>

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<sup>176</sup> Article 62(1)(e) L 4375/2016, no longer in force.

<sup>177</sup> Article 88 L 4399/2016.

<sup>178</sup> ECRE and Dutch Council for Refugees, *The application of the EU Charter of Fundamental Rights to asylum procedural law*, October 2014, available at: <http://bit.ly/2agyJ6v>, 81-84.

<sup>179</sup> Article 62(6) L 4375/2016, as amended by L 4399/2016.

<sup>180</sup> Information provided by the Appeals Authority, 6 February 2018.

<sup>181</sup> Article 61(4) L 4375/2016, as amended by L 4399/2016.

<sup>182</sup> Ministerial Decision 5401/3-156958, Gov. Gazette YOΔΔ 424/4-8-2016.

<sup>183</sup> Ministerial Decision 7396/30-12-2016, Gov. Gazette YOΔΔ 734/30-12-2016.

<sup>184</sup> Gazette YOΔΔ 222/15-5-2017.

<sup>185</sup> Information provided by the Directorate of the Hellenic Police, 17 January 2018.



Appeals and decisions by the Backlog Committees: 2017		
Type of decision	Number	Percentage
Refugee status	276	8.93%
Subsidiary protection	29	0.84%
Referral for humanitarian protection / Rejection	2,786	90.13%
<b>Total decisions</b>	<b>3,091</b>	-

Source: Directorate of the Hellenic Police, 17 January 2018. There is no separate registration for “referral for humanitarian protection” and “rejection”.

Moreover, as provided by Article 22 L 4375/2016, appellants whose appeal was pending before the Backlog Committees are granted by default a two-year permission to stay based on humanitarian grounds, which may be renewed, if the application has been lodged at least 5 years before 3 April 2016 and the application is still pending at second instance. Appellants who wish to continue the examination of the appeal as of the international protection grounds, have the right to request so within 2 months of the date that the humanitarian grant decision is communicated. Under Article 22 L 4375/2016, a total of 4,935 decisions granting humanitarian residence permits had been issued by the end of 2016, and another 971 were issued in 2017.<sup>186</sup>

### Procedure before the Backlog Committees

According to the law, applicants in the regular procedure have the right to lodge an administrative appeal before the Appeals Committees established by PD 114/2010 against a first instance decision rejecting an application, granting subsidiary protection instead of refugee status or withdrawing international protection status, within 30 days.<sup>187</sup> For decisions declaring an application as manifestly unfounded,<sup>188</sup> the deadline for appeals is 15 days.<sup>189</sup> Appeals submitted after this deadline are examined initially on admissibility and if declared admissible they are examined on the merits.<sup>190</sup>

Appeals have suspensive effect until the Appeals Committee reaches a decision.<sup>191</sup> Following a first instance decision, the asylum seeker’s “pink card” is withdrawn, and a new one is issued when an appeal is lodged. This card is valid for 6 months in the regular procedure.<sup>192</sup>

The Appeals Committee may decide not to call the applicant for a hearing where it considers that it can issue a decision based only upon examination of the file. If the information included in the file is not sufficient for deciding on the appeal, the Appeals Committee shall invite the applicant to submit additional information within 10 days or to appear before it.<sup>193</sup> In the latter case the applicant shall be informed within 5 days before the date of the examination, in a language which he or she understands, of the place and date of the examination of the appeal, and for the right to attend in person or by an attorney or other advisor before the Committee to verbally explain his or her arguments with the assistance of an interpreter, to give explanations or to submit any additional information.<sup>194</sup>

Following an amendment in 2016, it is provided that “in any event, an oral hearing is taking place if the appellant submits a relevant request at least two (2) days before the examination of the appeal.”<sup>195</sup>

<sup>186</sup> *Ibid.*

<sup>187</sup> Article 25(1)(a) PD 114/2010, as amended by Article 35(17) PD 113/2013.

<sup>188</sup> Article 17(3) PD 114/2010.

<sup>189</sup> Article 25(1)(b) PD 114/2010.

<sup>190</sup> Article 25(1) PD 114/2010, as amended by Article 23 L 4375/2016.

<sup>191</sup> Article 25(2) PD 114/2010.

<sup>192</sup> Article 25(1)(a) PD 114/2010, as amended by Article 3(1) PD 167/2014.

<sup>193</sup> Article 26(5) PD 114/2010, as amended by Article 3 PD 167/2014.

<sup>194</sup> *Ibid.*

<sup>195</sup> Article 23(2) L 4375/2016.

A decision of the Appeals Committee rejecting the administrative appeal sets a specified timeframe of no more than 90 days for the applicant to leave the Greek territory.<sup>196</sup> While examining a case, and if they consider that the criteria for granting an international protection status are not fulfilled, Appeals Committees should examine if one or more of the criteria for granting a residence permit on humanitarian grounds is/are fulfilled and in this case refers the case to the competent authority under the Secretariat General for Migration Policy.

#### 1.4.3. Appeals submitted before 3 April 2016 for applications lodged after 7 June 2013

According to the transitional provisions of L 4375/2016, appeals submitted before the entry into force of the law (3 April 2016) against decisions rejecting applications for international protection lodged after 7 June 2013 should be examined by the Appeals Committees operating until 25 September 2015, which should be re-established under a Ministerial Decision with the same composition they had until that date. During 2017 there was no such Committee in operation. Thus the examination of these appeals, estimated at about 3,000 cases, remains pending.<sup>197</sup>

#### 1.4.4. Judicial review

Applicants for international protection may lodge an application for annulment (*αίτηση ακύρωσης*) of a second instance decision of the Appeals Authority Committees or the Backlog Committees, before the Administrative Court of Appeals within 60 days from the notification of the decision.<sup>198</sup> The possibility to file such a request, the time limits, as well as the competent court for the judicial review, must be expressly stated in the body of the administrative decision. Following the application for annulment, an application for suspension (*αίτηση αναστολής*) together with a request for an interim order (*προσωρινή διαταγή*) can be filled.

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

- The application for annulment, application for suspension and request for an interim order can only be filled by a lawyer. In addition, no legal aid is provided in order to challenge a second instance negative decision on asylum application and the capacity of NGOs to file such application is very limited due to high legal fees. Legal aid may only be requested under the general provisions of Greek law,<sup>199</sup> which are in any event not tailored to asylum seekers and cannot be accessed by them in practice due to a number of obstacles: for example, the request for legal aid is submitted by an application written in Greek; free legal aid is granted only if the legal remedy for which the legal assistance is requested is not considered “manifestly inadmissible” or “manifestly unfounded”.<sup>200</sup>
- The application for annulment, application for suspension and request for an interim order do not have automatic suspensive effect.<sup>201</sup> Therefore between the application of suspension and/or the request for interim order and the decision of the court, there is no guarantee that the applicant will not be removed for the territory. Moreover, in practice, even if suspensive effect is requested, the Administrative Court may not issue a decision on the request for suspension / interim order up until the decision on the application for annulment.<sup>202</sup>

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<sup>196</sup> Article 26(6) PD 114/2010.

<sup>197</sup> Information provided by the Appeals Authority, 6 February 2018.

<sup>198</sup> Article 29 PD 114/2010 and Article 64 L 4375/2016, citing Article 15 L 3068/2002.

<sup>199</sup> Articles 276 and 276A Code of Administrative Procedure.

<sup>200</sup> *Ibid.*

<sup>201</sup> See e.g. ECtHR, *M.S.S. v. Belgium and Greece*, Application No 30696/09, Judgment of 21 January 2011.

<sup>202</sup> ECtHR, *R.U. v. Greece*, Application No 2237/08, Judgment of 7 June 2011, paras 77-78.

- The Administrative Court can only examine the legality of the decision and not the merits of the case.
- The judicial procedure is lengthy. GCR is aware of cases pending for a period between two to three years for the issuance of a decision of the Administrative Court of Appeals.

In this respect, it should be mentioned that the European Court of Human Rights (ECtHR) has granted interim measures under Rule 39 in two cases of rejected asylum seekers in 2017 in order to prevent their return.<sup>203</sup> Both applicants have challenged second instance negative decision before national Courts by submitting an application for annulment and an application for suspension together with a request for interim measures has been lodged (see [Fast-Track Border Procedure](#)).

Moreover, according to Article 64 L 4375/29016, the Minister of Migration Policy also has the right to request the annulment of a decision of the Appeals Committee before the Administrative Court of Appeals.<sup>204</sup> On 30 December 2017, for the first time ever, an application for annulment, an application for suspension and a request for an interim order was filed before the Administrative Appeal Court of Athens on behalf of the Minister of Migration Policy against a second instance decision granting refugee status.<sup>205</sup> The case concerns one of the eight servicemen who fled Turkey after the failed coup d'état attempt in July 2016 and who was granted refugee status by the Appeals Committee on 28 December 2017. On 8 January 2018, the Administrative Court of Athens accepted the request for interim order and ordered the temporary suspension of the decision granting refugee status. On 9 February 2018, following a request of the applicant to whom refugee status had been granted, the Council of State decided to undertake the examination of the case.<sup>206</sup> The hearing has been scheduled on 4 May 2018. The Athens Bar Association has made a third party intervention in the support of the applicant.<sup>207</sup>

## 1.5. Legal assistance

### Indicators: Regular Procedure: Legal Assistance

1. Do asylum seekers have access to free legal assistance at first instance in practice?
 

<input type="checkbox"/> Yes	<input type="checkbox"/> With difficulty	<input checked="" type="checkbox"/> No
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  - ❖ Does free legal assistance cover:
 

<input type="checkbox"/> Representation in interview
<input type="checkbox"/> Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?
 

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> With difficulty	<input type="checkbox"/> No
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  - ❖ Does free legal assistance cover
 

<input type="checkbox"/> Representation in courts
<input checked="" type="checkbox"/> Legal advice

Asylum seekers have the right to consult, at their own cost, a lawyer or other legal advisor on matters relating to their application.<sup>208</sup>

In September 2017, a state-run legal aid scheme in appeals procedures was put in place for the first time in Greece, with a number of 21 lawyers participating in the scheme. Apart for this welcome development, no state-funded legal aid is provided for other procedures regarding the asylum

<sup>203</sup> Efsyn, 'Μήνυμα ΕΔΔΑ κατά των απελάσεων', 2 May 2017, available in Greek at: <http://bit.ly/2mYuS6s>; ECRE, 'Greece: Strasbourg Court halts return of rejected asylum seeker to Turkey', 30 June 2017, available at: <http://bit.ly/2t8dNJ3>.

<sup>204</sup> Article 26(7) PD 114/2010 and Article 64 L 4375/2016.

<sup>205</sup> Asylum Campaign, 'The Asylum Campaign condemns the serious human rights violations concerning the asylum cases of the Turkish military officials', 14 January 2018, available at: <http://bit.ly/2HNRjUy>.

<sup>206</sup> Council of State, Act 2/2018 of the Committee of Article 1(1) L 3900/2010, 9 February 2018, available in Greek at: <http://bit.ly/2FAQxtl>.

<sup>207</sup> Athens Bar Association, 'Παράσταση του ΔΣΑ στο ΣτΕ στην υπόθεση ασύλου του Τούρκου αξιωματικού', 22 February 2018, available in Greek at: <http://bit.ly/2CLuhdv>.

<sup>208</sup> Article 44(1) L 4375/2016.

application, including the examination of the application at first instance and the judicial review of second instance decisions.

### 1.5.1. Legal assistance at first instance

No state-funded free legal aid is provided at first instance, nor is there an obligation to provide it in law. number of non-governmental organisations provide free legal assistance and counselling to asylum seekers at first instance. However, the scope of these services remains limited, taking into consideration the number of people residing in Greece and the needs throughout the whole asylum procedure – including registration of the application, first and second instance, judicial review. In a paper issued in January 2018, 14 legal aid NGOs identified 12 junctures for which legal assistance is required in the process of examination of asylum claims in order to ensure the respect of rights connected to applicants' basic needs.<sup>209</sup>

For example, as far as free legal assistance and counseling by NGOs under UNHCR funding is concerned, this has been provided in nearly 11,450 cases in sites, urban areas and detention as of January 2018. This number includes not only asylum seekers but also beneficiaries of international protection, and covers asylum procedures, family reunification, child protection, protection of sexual and gender-based violence (SGBV) survivors, other relevant administrative procedures and access to rights and refers to legal aid and counselling.<sup>210</sup>

In this regard it should be borne in mind that about 50,000 third-country nationals remained in Greece by the end of January 2018,<sup>211</sup> while a number of 36,340 first instance asylum applications and 7,481 appeals were pending at the end of 2017.<sup>212</sup> Moreover, a number of 10,354 persons have been granted international protection in 2017.<sup>213</sup>

### 1.5.2. Legal assistance in appeals

According to Article 44(2) L 4375/2016, free legal assistance should be provided to applicants in appeal procedures before the Appeals Authority. The terms and the conditions for the provision of free legal assistance should be determined by a Ministerial Decision, which was issued in September 2016.<sup>214</sup> A state-funded legal aid scheme on the basis of a list managed by the Asylum Service is operating for the first time in Greece as of September 2017.

According to the Ministerial Decision 12205/2016 regulating the state-funded legal aid scheme, asylum seekers must request legal aid at least 10 days before the date of examination of the appeal under the regular procedure, while shorter time limits are foreseen for the [Admissibility Procedure](#), [Accelerated Procedure](#) and [Fast-Track Border Procedure](#).<sup>215</sup> If a legal representative has not been appointed at the latest 5 days before the examination of the appeal under the regular procedure, the applicant may request a postponement of the examination.<sup>216</sup> The Decision also explicitly provides for the possibility of

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<sup>209</sup> ActionAid et al., *Legal Aid (Individual Legal Representation in Asylum/Refugee Context) for Migrants, Asylum Seekers and Refugees in Greece: Challenges and Barriers*, January 2018, available at: <http://bit.ly/2FyEjRW>.

<sup>210</sup> UNHCR, *Greece Fact Sheet*, 1-31 January 2018, available at: <http://bit.ly/2oAeQzB>.

<sup>211</sup> UNHCR, *Greece Fact Sheet*, 1-31 January 2018, available at: <http://bit.ly/2oAeQzB>; UNHCR estimates as of 31 January 2018 those who arrived and remained since the 2015-2016 influx.

<sup>212</sup> Information provided by the Asylum Service, 15 February 2018; Appeals Authority, 6 February 2018.

<sup>213</sup> Asylum Service, *Statistical data*, 31 December 2017.

<sup>214</sup> Ministerial Decision 12205/2016, Gazette 2864/B/9-9-2016.

<sup>215</sup> Article 1(3) MD 12205/2016.

<sup>216</sup> Article 1(4) MD 12205/2016.

legal assistance through video conferencing in every Regional Asylum Office.<sup>217</sup> Lawyers are remunerated based on a fixed sum of €80 per appeal.<sup>218</sup>

In practice, the scheme started operating on 21 September 2017, a total of 21 lawyers are registered on the list managed by the Asylum Service. In February 2018, a vacancy notice has been issued in order for the list of lawyers to be completed. According to this notice the total number of lawyers operating under the scheme will be 37.<sup>219</sup>

By the end of 2017 a total number of 941 asylum seekers with claims rejected at first instance had benefited by the scheme:

Legal aid scheme managed by the Asylum Service: 21 September – 31 December 2017						
Location	Lawyers	Cases supported				
RAO / AAU		Sep 2017	Oct 2017	Nov 2017	Dec 2017	Total
Attica	10	87	168	170	164	589
Thessaloniki	4	12	10	26	25	73
Thrace	3	9	47	30	26	112
Lesvos	1	0	17	14	13	44
Rhodes	1	0	17	16	17	50
Chios	1	6	11	15	8	40
Kos	1	4	12	13	4	33
<b>Total</b>	<b>21</b>	<b>118</b>	<b>282</b>	<b>284</b>	<b>257</b>	<b>941</b>

Source: Asylum Service, 15 February 2018; Asylum Service, 'Legal Aid for 21.9.2017 to 31.12.2017', 30 January 2018: <http://bit.ly/2DUJH4f>.

Legal assistance at the appeal stage of the asylum procedure in the framework of UNHCR's Memorandum of Cooperation with the Ministry of Migration Policy was provided to 3,600 appellants in 2017.<sup>220</sup>

Without underestimating the welcome development of the first-ever launch of a state-funded legal aid scheme, the capacity of the second instance legal aid scheme remains limited. Thus, in 2017, the state-funded legal aid scheme only started operating in 21 September 2017 and by the end of 2017 legal assistance had been provided to a number of 941 appellants. In addition, 3,600 appellants received provided legal assistance under the UNHCR-funded scheme are taken into consideration, while the total number of appeals lodged in 2017 was 11,632.<sup>221</sup> As it comes from these figures, compliance of the Greek Authorities with their obligations under national legislation and the recast Asylum Procedures Directive remains a matter of concern and should be further assessed.

<sup>217</sup> Article 1(7) MD 12205/2016.

<sup>218</sup> Article 3 MD 12205/2016.

<sup>219</sup> Asylum Service, Document No 3217/2018, available in Greek at: <https://bit.ly/2EHmvDT>.

<sup>220</sup> UNHCR, *Greece Fact Sheet*, 1-31 January 2018, available at: <http://bit.ly/2oAeQzB>.

<sup>221</sup> Information provided by the Appeals Authority, 6 February 2018.

## 2. Dublin

### 2.1. General

#### Dublin statistics: 2017

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
<b>Total</b>	9,784	4,268	<b>Total</b>	1,998	1
Germany	5,902	2,082	Germany	1,754	0
United Kingdom	909	:	Switzerland	77	1
Sweden	701	:	Belgium	46	0
Austria	465	:	Norway	44	0
Switzerland	299	:	Slovenia	29	0
Netherlands	202	:	Croatia	13	0
Bulgaria	192	:	France	9	0
France	172	:	Austria	7	0
Belgium	163	:	Sweden	5	0
Norway	148	:	Netherlands	4	0

Source: Asylum Service, 15 February 2018.

During 2017, Greece addressed 9,784 outgoing requests to other Member States under the Dublin Regulation. Within the same period, 7,231 requests were accepted and 2,163 rejected. At this point, it should be noted that there has been a remarkable increase in the number of outgoing requests compared to previous years:

Outgoing Dublin requests: 2014-2017				
Year	2014	2015	2016	2017
Number	1,126	1,073	4,886	9,784

Source: Eurostat; Asylum Service.

#### The application of the Dublin criteria

The majority of outgoing requests continue to take place in the context of family reunification:

Outgoing and incoming Dublin requests by criterion: 2017		
Dublin III Regulation criterion	Outgoing	Incoming
Family provisions: Articles 8-11	7,606	26
Documentation: Article 12	12	628
Irregular entry: Article 13	6	503
Dependent persons clause: Article 16	142	0
Humanitarian clause: Article 17(2)	1,500	4
"Take back": Article 18	518	837
<b>Total outgoing and incoming requests</b>	<b>9,784</b>	<b>1,998</b>

Source: Asylum Service, 15 February 2018.

### *Family unity*

Out of 7,606 outgoing requests based on family reunification provisions in 2017, 6,291 were accepted by other Member States.<sup>222</sup>

In order for a “take charge” request to be addressed to the Member State where a family member or relative resides, the consent of the relative is required, as well as documents proving the legal status of the relative in the receiving country (e.g. residence permit, asylum seeker’s card or other documents certifying the submission of an asylum application) and documentation bringing evidence of the family link (e.g. certificate of marriage, civil status, passport, ID). The complete lack of such documentation leads to non-expedition of an outgoing request by the Dublin Unit.<sup>223</sup>

Furthermore, according to GCR’s experience, only documents provided in English or translated in English seem to be taken into account by the Dublin Units of other Member States, thus making it more difficult for the applicants to provide those. For example, in a case assisted by GCR, a 16-year-old unaccompanied Syrian child requested his reunification with his aunt in Norway. A Syrian identity card and family status certificate were provided in Arabic but Norway rejected the request, stating: “we asked you to provide us more information regarding the applicant’s family ties to his alleged aunt. In your request for reexamination, you attached a report from a social worker. However, this report is in Greek. We kindly ask you to send us this in English so that we are able to consider your request. Finally, you sent us a photo of the family status certificate to prove the relationship. We need to be provided information regarding the applicant’s father, mother and siblings in English.” Only after the translation of all relevant documents was an acceptance issued by Norway in this case.

Furthermore, more recently, in cases where a subsequent separation of the family took place after their asylum application in Greece, rejections of Dublin requests state that such self-inflicted separation exposes children to danger and that reunification with such parents might not be in the child’s best interests or that the separation of the family took place in order for the family provisions of the Regulation to be invoked in an abusive manner, contrary to previous practice and without taking into consideration the individual circumstances of the case such as the reception conditions of the applicants in Greece. This practice should be further monitored as regards compliance with the right to family life.

### *Unaccompanied children*

Similar problems arise in the cases of unaccompanied children whose family members are present in another Member State. The system of appointing a guardian for minors is dysfunctional, as little is done after the Asylum Service or Police or RIC has informed the Public Prosecutor for minors who acts by law as temporary guardian for unaccompanied children; the Prosecutor merely assumes that capacity in theory. In practice, NGO personnel is usually appointed as temporary guardian by the Public Prosecutor. According to GCR’s experience, in 2017, there have not been serious delays in transfers of unaccompanied children below the age of 14 to another Member State where the family reunification request has been accepted, due to shortage of staff to escort the child, since NGO personnel is usually escorting the child in those cases. However, there have been cases where unaccompanied children have been waiting for almost a year to be transferred to Germany, after their reunification request was accepted.

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<sup>222</sup> Information provided by the Asylum Service, 15 February 2018.

<sup>223</sup> *Ibid.*



## The dependent persons and discretionary clauses

The acceptance rate has been lower on outgoing requests based on the humanitarian clause compared to requests based on the family provisions. Out of 1,500 outgoing requests under Article 17(2) of the Dublin Regulation in 2017, only 708 were accepted.<sup>224</sup> It should be noted that, according to GCR's experience, requests under the humanitarian clause mainly concern dependent and vulnerable persons who fall outside the family criteria set out in Articles 8-11 and cases where the three-month deadline for a request has expired for various reasons.

### 2.2. Procedure

#### Indicators: Dublin: Procedure

1. On average, how long does a transfer take after the responsible Member State has accepted responsibility? 179 days

The Dublin procedure is handled by the Dublin Unit in Athens. Regional Asylum Offices are competent for registering applications and thus potential Dublin cases, as well as to notify applicants of decisions after the determination of the responsible Member State has been carried out.

In line with Article 21 of the Dublin III Regulation, where an asylum application has been lodged in Greece and the authorities consider that another Member State is responsible for examining the application, Greece must issue a request for that Member State to take charge of the applicant no later than 3 months after the lodging of the application.

Generally, outgoing requests by Greece receive a reply within 2 months after the request is submitted, in line with the time limits imposed by the Regulation.<sup>225</sup> In 2017, the overall average time between the lodging of the application and the actual transfer to the responsible Member State was 215 days (7 months).<sup>226</sup>

However, since the Court of Justice of the European Union (CJEU) judgment in *Mengesteab* on 26 July 2017,<sup>227</sup> Germany has altered its practice and no longer considers that the 3-month deadline for the issuance of the outgoing request begins with the formal lodging of the asylum application, but with the making of the application. According to information provided to GCR by the Asylum Service, this shift in German practice has resulted in several outgoing requests being rejected as submitted after the deadline, on the ground that they were sent within 3 months of full registration but well beyond 3 months of making of the asylum application. The Greek Dublin Unit has asked for the re-examination of those cases under the "humanitarian" clause but received again negative responses from the German Dublin Unit. The Greek Dublin Unit clarified that in those particular cases Greece would accept the reunification of the families in Greece, if requested.<sup>228</sup>

Similarly, requests for family reunification based however on the "humanitarian" clause due to the expiry of the 3-month deadline due to the applicant's responsibility are usually rejected on the basis "art. 17(2) has not the intention to examine take charge requests which are expired", according to the rejecting Member State.

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<sup>224</sup> *Ibid.*

<sup>225</sup> Article 22(1) Dublin III Regulation.

<sup>226</sup> Information provided by the Asylum Service, 15 February 2018.

<sup>227</sup> CJEU, Case C-670/16 *Mengesteab*, Judgment of 26 July 2017.

<sup>228</sup> Information provided by the Asylum Service, 15 February 2018.

## Individualised guarantees

The Greek Dublin Unit does not request individual guarantees from other countries prior to ordering a Dublin transfer. In family reunification cases through Dublin III, the reception conditions in the receiving state are not examined. It is sufficient that the applicant is willing to be transferred there and that he or she relinquishes his or her right to appeal against the decision rejecting the asylum application as inadmissible.

## Transfers

Dublin procedures appear to run smoothly, but usually making use of the maximum time of the requisite deadlines. For example, deadlines for “take charge” requests as well as transfers are usually met without jeopardising the outcome of the reunification, as far as other Member States than Germany are concerned. The special case of transfers to Germany was analyzed here above in detail.

However, delays occur and the waiting time for transfers is still high. The average duration of the transfer procedure, after a Member State had accepted responsibility, was approximately 5-6 months in 2017.<sup>229</sup> Applicants who are to travel by plane to another Member State are picked up by the Hellenic Police from their house or from a location in proximity and are driven to the airport. The police officer escorts the applicants to the check-in counter. Once the boarding passes are issued, the escorting officer hands in the boarding passes, the *laissez-passer* and the applicant’s “asylum seeker’s card” to a police officer at the airport. The latter escorts the applicant into the aircraft, hands in the required documents to the captain of the aircraft and the applicant boards the aircraft.

Due to the lack of relevant funding, applicants under the Dublin Regulation were expected to cover their own travel expenses during the second half of 2017. NGOs endeavoured to find sponsors or donors, since there were many cases where people could not afford the transfer. On 4 October 2017, the Greek Ombudsman for the Rights of the Child addressed an official letter to the Asylum Service, asking for clarifications on the Dublin procedure regarding accompanied and unaccompanied children, on the delays of transfers to Germany and the lack of funding of transfer expenses. The Asylum Service responded on 11 December 2017, stating that concerning the funding of transfers applicants were indeed asked to cover their transfer expenses on their own, but that by the end of 2017 a relevant contract had been signed between the Asylum Service and a travel agency.<sup>230</sup>

Compared to a total 9,784 requests in 2017, a total 4,268 transfers were implemented, thereby indicating a transfer rate of 43.6%:

Outgoing Dublin transfers by month: 2017												
Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
247	410	646	163	242	399	240	171	274	356	589	531	<b>4,268</b>

Source: Asylum Service, 15 February 2018.

In March 2017, an agreement between the German and the Greek Government has reportedly led to the introduction of a monthly limit on the number of people transferred to Germany under the Dublin Regulation. The cap has been set at 70 people per month. The agreement reached the media in May 2017,<sup>231</sup> and the European Parliament by way of parliamentary question on 13 July 2017.<sup>232</sup>

<sup>229</sup> Protocol Number Φ.1500.2/43214/2017.

<sup>230</sup> Protocol Number 15875/11.12.2017.

<sup>231</sup> Efsyn, ‘Γερμανικό πλαφόν στην οικογενειακή επανένωση’, 11 May 2017, available in Greek at: <http://bit.ly/2CpHdKc>; Deutsche Welle, ‘Germany limits refugee family unification for those arriving from

Furthermore, 27 civil society organisations addressed an open letter to European Commission on 27 July 2017 to express their “serious concerns on the *de facto* violation of the right for family reunification and breach of relevant provisions stipulated in the EU Regulation 604/2013 (Dublin III Regulation), regarding asylum seekers’ transfers from Greece to Germany under family reunification procedure.”<sup>233</sup>

The European Commission admitted the existence of such an agreement but stated that it was only effective for April and May 2017. “On this basis, the Commission understands that the two Member States are not restricting per se family reunification under the Dublin Regulation, but that they have agreed due to logistical reasons to prolong for a certain period the delay during which these persons are normally transferred to Germany. The transfer arrangements under the Dublin Regulation concern the relationship between the two Member States involved and are therefore subject to agreement between the relevant authorities. In the Commission's view, such arrangements do not raise an issue of compatibility with EC law.”<sup>234</sup>

Upon request by GCR, the Asylum Service responded that the German Dublin Unit requested in March 2017 a reduction in Dublin transfers, for administrative reasons, while the Greek Dublin Unit highlighted the deadline for the transfers, provided for in the Regulation. After putting consistent pressure on the competent authorities, a greater number of transfers was achieved from September 2017 onwards, while at the same time German authorities consented on the transfer of all the cases whose transfer deadline had already expired due to this delay.<sup>235</sup>

The Asylum Service statistics confirm this explanation.<sup>236</sup> On March 2017, 580 transfers took place towards Germany, while just 73 were effectuated on April 2017 and 69 on May 2017. The number of transfers kept growing the following months, as hereinafter:

Outgoing Dublin transfers to Germany by month: 2017												
Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
142	336	580	73	69	115	109	116	200	254	464	344	<b>2,802</b>

Source: Asylum Service, 15 February 2018.

Finally, it is worth mentioning that the German Administrative Court of Wiesbaden ruled on 15 September 2017 that the German Federal Office for Migration and Refugees (BAMF) must comply with the 6-month timeframe for carrying out a Dublin transfer as set out in the Dublin III Regulation, regardless any administrative discomfort caused.<sup>237</sup>

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<sup>232</sup> Greece’, 19 May 2017, available at: <http://bit.ly/2EZqrmT>; ECRE, ‘Greece/Germany: Cap on transfers under Dublin family provisions’, 12 May 2017, available at: <http://bit.ly/2r9vXsi>.

<sup>233</sup> European Parliament, Parliamentary question “German cap on family reunification of asylum-seekers from Greece”, E-004791/2017, 13 July 2017, available at: <http://bit.ly/2CoC6tC>.

<sup>234</sup> ECRE, ‘Civil Society organisations raise concern over German violations of the right for family reunification for asylum seekers from Greece’, 27 July 2017, available at: <http://bit.ly/2CNY7hc>.

<sup>235</sup> European Parliament, Reply of Commissioner Avramopoulos to parliamentary question, E-004791/2017, 19 September 2017, available at: <http://bit.ly/2FE0eHo>.

<sup>236</sup> Information provided by the Asylum Service, 15 February 2018.

<sup>237</sup> *Ibid.*

<sup>237</sup> ECRE, ‘Administrative Court of Wiesbaden: BAMF must comply with timeframe to transfer applicants from Greece to Germany’, 22 September 2017, available at: <http://bit.ly/2wFuJf3>.

## 2.3. Personal interview

### Indicators: Dublin: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the Dublin procedure?  Yes  No
  - ❖ If so, are interpreters available in practice, for interviews?  Yes  No
2. Are interviews conducted through video conferencing?  Frequently  Rarely  Never

Under the Dublin procedure, a personal interview is not always required.<sup>238</sup>

In practice, detailed personal interviews on the merits do not usually take place, when outgoing requests are pending for the transfer of asylum seekers under the family reunification procedure, although questions mostly relating to the Dublin procedure are almost always addressed to the applicant in an interview framework. The applicant identifies the family member with whom he or she desires to reunite and provides all the relevant documentation.

Questions relating to the Dublin procedure are always addressed to the applicant during the **Regular Procedure: Personal Interview** examining his or her asylum claim. According to GCR's experience, applicants who reveal at this later stage, well after the 3-month deadline, the existence of a close family member in another EU Member State, thus fulfilling the criteria of Dublin III Regulation, are given the chance to apply for family reunification. However, the heavy workload of the Asylum Service and the fact that the deadline for a request is already missed result in those applicants waiting for prolonged periods before an outgoing request is even sent by the Greek Dublin Unit. In several relevant cases handled by GCR, the relevant outgoing requests have not been sent even 4 months after the signature of consent for family reunification by the applicant.

Interviews in non-family reunification cases tend to be more detailed when it is ascertained that an asylum seeker, after being fingerprinted, has already applied for asylum in another EU Member State before Greece.

## 2.4. Appeal

### Indicators: Dublin: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the Dublin procedure?
  - Yes  No
  - ❖ If yes, is it  Judicial  Administrative
  - ❖ If yes, is it suspensive  Yes  No

Applications for international protection are declared inadmissible where the Dublin Regulation applies.<sup>239</sup> An applicant may lodge an appeal against a first instance decision rejecting an application as inadmissible due to the application of the Dublin Regulation within 15 days.<sup>240</sup> Such appeal is also directed against the transfer decision, which is incorporated in the inadmissibility decision.<sup>241</sup>

<sup>238</sup> Article 5 Dublin III Regulation.

<sup>239</sup> Article 54(1)(b) L 4375/2016.

<sup>240</sup> Article 61(1)(b) L 4375/2016.

<sup>241</sup> *Ibid.*

## 2.5. Legal assistance

### Indicators: Dublin: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?  
 Yes       With difficulty       No  
❖ Does free legal assistance cover:  
 Representation in interview  
 Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a Dublin decision in practice?  
 Yes       With difficulty       No  
❖ Does free legal assistance cover:  
 Representation in courts  
 Legal advice

Access to free legal assistance and representation in the context of a Dublin procedure is available under the conditions described in [Regular Procedure: Legal Assistance](#). The same problems and obstacles described in the regular procedure exist in the context of the Dublin procedure, with NGOs trying in practice to cover this field as well. Since September 2017, state-organised legal aid only at second instance has been organised in several RAO, with limited capacity, however.

Limited access to legal assistance creates difficulties for applicants in navigating the complexities of the Dublin procedure. The case files of the applicants are communicated by the police or RAO competent for the registration of asylum applications to the Dublin Unit. Moreover, the Dublin Unit does not consider itself responsible for preparing Dublin-related case files, as the applicants bear the responsibility of submitting to the Asylum Service all documents required in order for the Dublin Unit to establish a “take charge” request, such as proof of family links. However, in practice, according to GCR’s experience, Dublin Unit officers usually make every effort to notify applicants on time for the submission of any missing documents before the expiry of the deadlines.

## 2.6. Suspension of transfers

### Indicators: Dublin: Suspension of Transfers

1. Are Dublin transfers systematically suspended as a matter of policy or jurisprudence to one or more countries?       Yes       No  
❖ If yes, to which country or countries?

No recent information on suspension of transfers is available.

## 2.7. The situation of Dublin returnees

Transfers of asylum seekers from another Member State to Greece under the Dublin Regulation had been suspended since 2011, following the *M.S.S. v. Belgium & Greece* ruling of the European Court of Human Rights (ECtHR) and the Joined Cases C-411/10 and C-493/10 *N.S. v. Secretary of State for the Home Department* ruling of the CJEU.<sup>242</sup>

Following three Recommendations issued to Greece in the course of 2016,<sup>243</sup> on 8 December 2016, European Commission issued a Fourth Recommendation in favour of the resumption of Dublin returns to Greece, starting from 15 March 2017, without retroactive effect and only regarding asylum applicants

<sup>242</sup> ECtHR, *M.S.S. v. Belgium and Greece*, Application No. 30696/09, Judgment of 21 January 2011; CJEU, Joined Cases C-411/10 and C-493/10 *N.S. v. Secretary of State for the Home Department*, Judgment of 21 December 2011.

<sup>243</sup> Commission Recommendation of 10 February 2016, C(2016) 871; Commission Recommendation of 15 June 2016, C(2016) 2805; Commission Recommendation of 28 September 2016, C(2016) 6311.

who have entered Greece from 15 March 2017 onwards or for whom Greece is responsible from 15 March 2017 onwards under other Dublin criteria.<sup>244</sup> Persons belonging to vulnerable groups such as unaccompanied children are to be excluded from Dublin transfers for the moment, according to the Recommendation.<sup>245</sup>

The Recommendation has been sharply criticised by numerous civil society organisations, including Doctors of the World,<sup>246</sup> Amnesty International,<sup>247</sup> and Human Rights Watch.<sup>248</sup> In a letter addressed by ECRE and Greek civil society organisations GCR, Aitima and SolidarityNow, to the President of the European Commission and the Greek Minister of Migration Policy on 15 December 2016, the organisations stressed:

“The envisaged resumption of transfers of asylum seekers under the Dublin III Regulation to Greece is in our view premature in light of the persistent deficiencies in the Greek asylum system, that are unlikely to be resolved by the envisaged date of 15 March 2017. Moreover, it disregards of the pending procedure before the Council of European Committee of Ministers on the execution of the M.S.S. v. Belgium and Greece judgment of the European Court of Human Rights and is at odds with ongoing efforts to increase relocation from Greece.”<sup>249</sup>

The National Commission for Human Rights (NCHR) in a Statement of 19 December 2016, has expressed its “grave concern” with regard to the Commission Recommendation and noted that

“[I]t should be recalled that all refugee reception and protection mechanisms in Greece are undergoing tremendous pressure... the GNCHR reiterates its established positions, insisting that the only possible and effective solution is the immediate modification of the EU migration policy and in particular of the Dublin system, which was proven to be inconsistent with the current needs and incompatible with the effective protection of human rights as well as the principles of solidarity and burden-sharing among the EU Member-States.”<sup>250</sup>

However, during 2017, the Greek Dublin Unit received 1,998 incoming requests under the Dublin Regulation, coming mainly from Germany.

Of those, 71 requests were accepted, of which 20 concerning Armenians, 15 Syrians and 5 Iranians.<sup>251</sup> A total of 1,489 incoming requests were refused, of which 497 concerning Turks, 358 Syrians, 217 Armenians and 132 Afghans.<sup>252</sup> The breakdown per sending country is as follows:

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<sup>244</sup> Commission Recommendation of 8 December 2016 addressed to the Member States on the resumption of transfers to Greece under Regulation (EU) No. 604/2013, C(2016) 8525.

<sup>245</sup> Commission Recommendation C(2016) 8525, para 9.

<sup>246</sup> Doctors of the World Greece, ‘Επανάραξη των επιστροφών «Δουβλίνου»’, 14 December 2016, available in Greek at: <http://bit.ly/2gHDKMJ>.

<sup>247</sup> Amnesty International, ‘EU pressure on Greece for Dublin returns is “hypocritical”’, 8 December 2016, available at: <http://bit.ly/2kG8Dzf>.

<sup>248</sup> Human Rights Watch, ‘EU: Returns to Greece Put Refugees at Risk’, 10 December 2016, available at: <http://bit.ly/2hgVaNi>.

<sup>249</sup> ECRE, GCR, Aitima and SolidarityNow, *Letter to the President of the European Commission and the Greek Minister of Migration Policy “Re: Joint Action Plan on EU-Turkey Statement and resumption of Dublin transfers to Greece”*, 15 December 2016, available at: <http://bit.ly/2kGcc8P>.

<sup>250</sup> NCHR, ‘Statement in response to the recommendation of the European Commission to reactivate the refugee return mechanism under the Dublin system’, 19 December 2016, available at: <http://bit.ly/2kGi7us>.

<sup>251</sup> Information provided by the Asylum Service, 15 February 2018.

<sup>252</sup> *Ibid.*



Incoming Dublin requests by sending country: 2017			
Country	Total requests	Accepted requests	Refused requests
Germany	1,754	57	1,489
Switzerland	77	4	63
Belgium	46	4	38
Norway	44	5	35
Slovenia	29	0	27
<b>Total</b>	<b>1,998</b>	<b>71</b>	<b>1,694</b>

Source: Asylum Service, 15 February 2018.

Regarding the guarantees provided by the Greek state to the Member states requesting the return of a person to Greece, the Greek Dublin Unit and the Reception and Identification Service inform the Member State on the availability of accommodation in any reception facility and on the resumption of the asylum procedure, following the person's return.

If the application of the person concerned has not been closed, i.e. the deadline of 9 months from the discontinuation of the procedure has not expired,<sup>253</sup> the person can continue the previous procedure upon return to Greece. Otherwise, the person has to file a [Subsequent Application](#), contrary to Article 18(2) of the Dublin Regulation.

Only 1 person has been transferred back to Greece from Switzerland on 18 December 2017, while another was transferred from Germany on 1 February 2018.<sup>254</sup>

Nevertheless, it should be borne in mind that [Reception Conditions](#) in Greece remain under strain and that destitution and homelessness remain a matter of concern. Greece received 8.5% of the total number of asylum seekers in the EU, while it had the largest number of asylum seekers per capita.<sup>255</sup> On 26 October 2017, the Administrative Court of Düsseldorf ruled against the transfer of an asylum seeker holding a visa to Greece, even though Greece had accepted the Dublin request on 8 August 2017. The Court based its decision mainly on information and recommendations from the European Commission on 8 December 2016. The Court reasoned that there were substantial grounds for believing that there were systemic flaws in the asylum procedure and in the reception conditions for applicants in Greece, resulting in a risk of inhuman or degrading treatment.<sup>256</sup>

### 3. Admissibility procedure

#### 3.1. General (scope, criteria, time limits)

Under Article 54 L 4375/2016, an application can be considered as inadmissible on the following grounds:

1. Another EU Member State has granted international protection status or has accepted responsibility under the Dublin Regulation;
2. The applicant comes from a "safe third country" or a "first country of asylum";
3. The application is a subsequent application and no "new essential elements" have been presented;

<sup>253</sup> Article 47(4) L 4375/2016.

<sup>254</sup> Information provided by the Asylum Service, 15 February 2018.

<sup>255</sup> Asylum Service, 'The work of the Asylum Service in 2017', 25 January 2018, available at: <http://bit.ly/2BsCDGd>.

<sup>256</sup> Administrative Court of Düsseldorf, Decision 12 L 4591/17.A, 26 October 2017, available in German at: <http://bit.ly/2tW2GqG>.



4. A family member has submitted a separate application to the family application without justification for lodging a separate claim.

The same grounds for admissibility apply also under the Old Procedure under PD 114/2010.

The Asylum Service dismissed 22,497 applications as inadmissible in 2017:

Inadmissibility decisions: 2017	
Type of decision	Number
Safe third country	919
Dublin cases	8,330
Relocation	12,323
Subsequent application	915
Formal reasons	10
<b>Total</b>	<b>22,497</b>

Source: Asylum Service, Asylum Statistics December 2017.

### 3.2. Personal interview

#### Indicators: Admissibility Procedure: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the admissibility procedure?
 

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If so, are questions limited to nationality, identity, travel route?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
❖ If so, are interpreters available in practice, for interviews?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
  
2. Are interviews conducted through video conferencing?
 

<input type="checkbox"/> Frequently	<input type="checkbox"/> Rarely	<input type="checkbox"/> Never
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The conduct of an interview on the admissibility procedure varies depending on the admissibility ground examined. For example, according to Article 59 L 4375/2016, as a rule no interview is taking place during the preliminary examination of a subsequent application.<sup>257</sup> In Dublin cases, an interview limited to questions on the travel route, the family members' whereabouts etc. takes place (see section on [Dublin: Personal Interview](#)). Personal interviews in cases examined under the "first country of asylum" / "safe third country" concepts focus on the circumstances that the applicant faced in Turkey.

### 3.3. Appeal

#### Indicators: Admissibility Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against an inadmissibility decision?
 

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If yes, is it	<input type="checkbox"/> Judicial <input checked="" type="checkbox"/> Administrative
❖ If yes, is it suspensive	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

<sup>257</sup> According to the second limb of Article 59(2), "Exceptionally, the applicant may be invited, according to the provisions of this Part, to a hearing in order to clarify elements of the subsequent application, when the Determining Authority considers this necessary".

An appeal against a first instance decision of inadmissibility may be lodged within 15 days,<sup>258</sup> instead of 30 in the regular procedure. Under the border procedure the appeal may be lodged within 5 days.<sup>259</sup> The appeal has automatic suspensive effect.

### 3.4. Legal assistance

#### Indicators: Admissibility Procedure: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance during admissibility procedures in practice?
  - Yes       With difficulty       No
  - ❖ Does free legal assistance cover:
    - Representation in interview
    - Legal advice
  
2. Do asylum seekers have access to free legal assistance on appeal against an inadmissibility decision in practice?
  - Yes       With difficulty       No
  - ❖ Does free legal assistance cover
    - Representation in courts
    - Legal advice

Legal Assistance in the admissibility procedure does not differ from the one granted for the regular procedure (see section on [Regular Procedure: Legal Assistance](#)).

## 4. Border procedure (airport and port transit zones)

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

#### Indicators: Border Procedure: General

1. Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities?  Yes  No
  
2. Can an application made at the border be examined in substance during a border procedure?  Yes  No
  
3. Is there a maximum time limit for a first instance decision laid down in the law?  Yes  No
  - ❖ If yes, what is the maximum time limit? 28 days

Article 60 L 4375/2016 establishes two different types of border procedures. The first will be cited here as “normal border procedure” and the second as “fast-track border procedure”. In the second case, the rights of asylum seekers are severely restricted, as it will be explained in the section on [Fast-Track Border Procedure](#).

The law does not limit the applicability of the border procedure to admissibility or to the substance of claims processed under an accelerated procedure, as required by Article 43 of the recast Asylum Procedures Directive. Under the terms of Article 60 L 4375/2016, the merits of any asylum application could be examined at the border.

In the “normal border procedure”,<sup>260</sup> where applications for international protection are submitted in transit zones of ports or airports in the country, asylum seekers enjoy the same rights and guarantees with those whose applications are lodged in the mainland.<sup>261</sup> However, deadlines are shorter: asylum seekers have no more than 3 days for interview preparation and consultation of a legal or other counsellor to assist them during the procedure and, when an appeal is lodged, its examination can be carried out at the earliest 5 days after its submission.

<sup>258</sup> Article 61(1)(b) L 4375/2016 and Article 25(1)(b) PD 114/2010 for the Old Procedure.

<sup>259</sup> Article 61(1)(c) L 4375/2016.

<sup>260</sup> Article 60(1) L 4375/2016.

<sup>261</sup> Articles 41, 44, 45 and 46 L 4375/2016.

According to Article 38 L 4375/2016, the Asylum Service, in cooperation with the authorities operating in detention facilities and at Greek border entry points and/or civil society organisations, shall ensure the provision of information on the possibility to submit an application for international protection. Interpretation services shall be also provided to the extent that this is necessary for the facilitation of access to the asylum procedure. Organisations and persons providing advice and counselling, shall have effective access, unless there are reasons related to national security, or public order or reasons that are determined by the administrative management of the crossing point concerned and impose the limitation of such access. Such limitations must not result in access being rendered impossible.

Where no decision is taken within 28 days, asylum seekers are allowed entry into the Greek territory for their application to be examined according to the provisions concerning the [Regular Procedure](#).<sup>262</sup> During this 28-day period, applicants remain *de facto* in detention (see [Grounds for Detention](#)).

The abovementioned procedure is in practice applied only in airport transit zones, particularly to those arriving in a Greek airport – usually through a transit flight – without a valid entry authorisation and apply for asylum at the airport.

With a Police Circular of 18 June 2016 communicated to all police authorities, instructions were provided *inter alia* as to the procedure to be followed when a third-country national remaining in a detention centre or a RIC wishes to apply for international protection, which includes persons subject to border procedure.<sup>263</sup>

The number of asylum applications subject to the border procedure at the airport in 2017 is not available.<sup>264</sup>

#### 4.2. Personal interview

##### Indicators: Border Procedure: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the border procedure?
 

	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If so, are questions limited to nationality, identity, travel route?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
❖ If so, are interpreters available in practice, for interviews?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
  
2. Are interviews conducted through video conferencing?
 

<input type="checkbox"/> Frequently	<input type="checkbox"/> Rarely	<input checked="" type="checkbox"/> Never
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The personal interview at the border is conducted according to the same rules described under the regular procedure.

In practice, in cases known to GCR, where the application has been submitted in the **Athens International Airport** transit zone, the asylum seeker is transferred to the RAO of Attica for the interview to take place. Consequently, no interview through video conferencing in the transit zones has come to the attention of GCR up until now.

<sup>262</sup> Article 60(2) L 4375/2016.

<sup>263</sup> Police Circular No 1604/16/1195968/18-6-2016, available in Greek at: <http://bit.ly/2ngIEj6>.

<sup>264</sup> Information provided by the Asylum Service, 15 February 2018.

### 4.3. Appeal

#### Indicators: Border Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the border procedure?

- |                            |   |  |
|----------------------------|---|--|
| ❖ If yes, is it            | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No                        |
| ❖ If yes, is it suspensive | <input type="checkbox"/> Judicial       | <input checked="" type="checkbox"/> Administrative |
|                            | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No                        |

According to Article 61(1)(d) L 4375/2016, under the border procedure applicants can lodge their appeals within 5 days from the notification of the first instance decision.

In case where the appeal is rejected, the applicant has the right to appeal before the Administrative Court of Appeal (see [Regular Procedure: Appeal](#)).

### 4.4. Legal assistance

#### Indicators: Border Procedure: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?

- |                                     |  |  |  |
|-------------------------------------|--|--|--|
| ❖ Does free legal assistance cover: | <input type="checkbox"/> Yes                         | <input type="checkbox"/> With difficulty | <input checked="" type="checkbox"/> No |
|                                     | <input type="checkbox"/> Representation in interview |  |  |
|                                     | <input type="checkbox"/> Legal advice                |  |  |

2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?

- |                                    |   |   |                             |
|------------------------------------|---|---|-----------------------------|
| ❖ Does free legal assistance cover | <input type="checkbox"/> Yes                      | <input checked="" type="checkbox"/> With difficulty | <input type="checkbox"/> No |
|                                    | <input type="checkbox"/> Representation in courts |   |                             |
|                                    | <input checked="" type="checkbox"/> Legal advice  |   |                             |

The law does not contain special provisions regarding free legal assistance in the border procedure. The general provisions regarding legal aid are also applicable here (see section on [Regular Procedure: Legal Assistance](#)).

## 5. Fast-track border procedure (Eastern Aegean islands)

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

#### Indicators: Fast-Track Border Procedure: General

1. Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities?  Yes  No

2. Can an application made at the border be examined in substance during a border procedure?  Yes  No

3. Is there a maximum time limit for a first instance decision laid down in the law?  Yes  No  
❖ If yes, what is the maximum time limit? 2 days

Article 60(4) L 4375/2016 foresees a special border procedure, known as a “fast-track” border procedure, visibly connected to the implementation of the EU-Turkey statement. In particular, the fast-track border procedure as foreseen by L 4375/2016, voted some days after the entry into force of the EU Turkey statement, provides an extremely truncated asylum procedure with fewer guarantees.<sup>265</sup> As the Director of the Asylum Service noted at that time:

<sup>265</sup> GCR, *Παρατηρήσεις επί του νόμου 4375/2016*, 8 April 2016, available in Greek at: <http://bit.ly/1Sa2lmH>.

“Insufferable pressure is being put on us to reduce our standards and minimise the guarantees of the asylum process... to change our laws, to change our standards to the lowest possible under the EU [Asylum Procedures] directive.”<sup>266</sup>

The United Nations Special Rapporteur on the human rights of migrants highlighted that the provisions with regard to the exceptional derogation measures for persons applying for asylum at the border raise “serious concerns over due process guarantees.”<sup>267</sup>

### Trigger and scope of application

The fast-track border procedure is introduced as an extraordinary and temporary procedure. However, its application is repeatedly extended.<sup>268</sup>

According to Article 60(4) said procedure can be “exceptionally” applied in the case where third-country nationals or stateless persons arrive in large numbers and apply for international protection at the border or at airport / port transit zones or while remaining in Reception and Identification Centres (RIC), and following a relevant Joint Decision by the Minister of Interior and Administrative Reconstruction and the Minister of National Defence. Pursuant to the original wording of L 4375/2016, the duration of the application of the fast-track border procedure should not exceed 6 months from the publication of that law and would be prolonged for a further 3-month period by a decision issued by the Minister of Interior and Administrative Reconstruction.<sup>269</sup>

Since then, however, the duration of the fast-track border procedure has been repeatedly amended: under a June 2016 reform it would not exceed 6 months and could be extended for another 6 months,<sup>270</sup> and following an August 2017 reform it is applicable for 24 months from the publication of the latest amendment.<sup>271</sup> Therefore the fast-track border procedure remains applicable to date.

The procedure is applied in cases of applicants subject to the EU-Turkey statement, i.e. applicants who have arrived on the Greek Eastern Aegean islands after 20 March 2016 and have lodged applications before the Regional Asylum Offices of **Lesvos, Chios, Samos, Leros** and **Rhodes**, and the Asylum Unit of **Kos**. On the contrary, applications lodged before the Asylum Unit of **Fylakio** by persons remaining in the RIC of Fylakio in Evros are not examined under the fast-track border procedure.

Finally, as reported in September 2017, persons arriving on the island of **Crete**, where the fast-track border procedure is not applicable, have been transferred to Kos with a view to being subjected to this procedure.<sup>272</sup>

### Main features of the procedure

The fast-track border procedure under Article 60(4) L 4375/2016 provides among others that:

<sup>266</sup> IRIN, ‘Greek asylum system reaches breaking point’, 31 March 2016, available at: <http://bit.ly/1RNCKja>.

<sup>267</sup> Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants on his mission to Greece*, A/HRC/35/25/Add.2, 24 April 2017, available at: <http://bit.ly/2rHF7kl>, para 78.

<sup>268</sup> See also Council of the European Union, *EU-Turkey statement*, 18 March 2016, para 1: “It will be a temporary and extraordinary measure.”

<sup>269</sup> Article 80(26) L 4375/2016, as initially in force.

<sup>270</sup> Article 80(26) L 4375/2016, as amended by Article 86(20) L 4399/2016.

<sup>271</sup> Article 80(26) L 4375/2016, as amended by Article 96(4) L 4485/2017.

<sup>272</sup> See e.g. ECRE, ‘The other Greek island: Squalid conditions and arbitrary deportation in Crete’, 22 September 2017, available at: <http://bit.ly/2fnyQFb>; Efsyn, ‘«Κόλαφος» του Συνήγορου του Πολίτη για τις απελάσεις στο Ηράκλειο’, 20 September 2017, available in Greek at: <http://bit.ly/2DUdfyb>; Efsyn, ‘Νέες απελάσεις από την Κρήτη - «Διακοσμητικό» το Γραφείο Ασύλου’, 29 September 2017, available in Greek at: <http://bit.ly/2DMwNW0>.

**(a) The registration of asylum applications, the notification of decisions and other procedural documents, as well as the receipt of appeals, may be conducted by staff of the Hellenic Police or the Armed Forces.**

By the end of 2017, about 21-22 police officers were assisting the Asylum Service in this procedure. Their tasks included fingerprinting of applicants, issuance and renewal of asylum seekers' cards and notification of decisions.<sup>273</sup>

**(b) The interview of asylum seekers may also be conducted by personnel deployed by EASO.**

The initial provision of Article 60(4)(b) L 4375/2016 foresaw that the Asylum Service "may be assisted" in the conduct of interviews as well as any other procedure by staff and interpreters deployed by EASO. The possibility for the asylum interview to be conducted by an EASO caseworker was introduced by a subsequent amendment in June 2016.<sup>274</sup>

The total number of EASO officers and caseworkers of other Member States assigned to EASO in 2017 was 176.<sup>275</sup> The new Regulation of the Asylum Service, adopted in February 2018, expressly states that its provisions are also binding for EASO staff assisting the Asylum Service.<sup>276</sup>

**(c) The asylum procedure shall be concluded in a very short time period (no more than 2 weeks).**

This may result in the underestimation of the procedural and qualification guarantees provided by the international, European and national legal framework, including the right to be assisted by a lawyer. As these truncated time limits undoubtedly affect the procedural guarantees available to asylum seekers subject to a "fast-track border procedure", there should be an assessment of their conformity with Article 43 of the recast Asylum Procedures Directive, which does not permit restrictions on the procedural rights available in a border procedure for reasons related to large numbers of arrivals.

More precisely, according to points (d) and (e) of the provision:

- ❖ The time given to applicants in order to exercise their right to "sufficiently prepare and consult a legal or other counsellor who shall assist them during the procedure" is limited to one day;
- ❖ Decisions shall be issued, at the latest, the day following the conduct of the interview and shall be notified, at the latest, the day following its issuance;
- ❖ The deadline to submit an appeal against a negative decision is 5 days from the notification of this decision;
- ❖ When an appeal is lodged, its examination is carried out no earlier than 2 days and no later than 3 days after its submission, which means that in the first case appellants must submit any supplementary evidence or a written submission the day after the notification of a first instance negative decision; or within 2 days maximum if the appeal is examined within 3 days;
- ❖ In case the Appeals Authority decides to conduct an oral hearing, the appellant is invited before the competent Committee one day before the date of the examination of their appeal and they can be given, after the conclusion of the oral hearing, one day to submit supplementary evidence or a written submission. Decisions on appeals shall be issued, at the latest, 2 days following the day of the appeal examination or the deposit of submissions and shall be notified, at the latest, the day following their issuance.

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<sup>273</sup> Information provided by the Asylum Service, 15 February 2018.

<sup>274</sup> Article 80(13) L 4399/2016.

<sup>275</sup> Information provided by the Asylum Service, 15 February 2018.

<sup>276</sup> Ministerial Decision 3385, Gov. Gazette B' 417/14.2.2018.



As stated by the United Nations Special Rapporteur on the human rights of migrants, the duration of the procedure “raises concerns over access to an effective remedy, despite the support of NGOs. The Special Rapporteur is concerned that asylum seekers may not be granted a fair hearing of their case, as their claims are examined under the admissibility procedure, with a very short deadline to prepare.”<sup>277</sup>

It should also be noted that these very short time limits are only applied against the applicant in practice. For example, despite the fact that the average processing time in the first instance fast-track border procedure was 83 days, instead of 7 days as foreseen by law, while the appeal procedure before the Appeals Committees remains slow,<sup>278</sup> applicants still have to comply with the time limits e.g. one day to prepare for the interview. More precisely, average time for processing applications under the fast-track border procedure at first instance in December 2017 was 83 days from the pre-registration of the application and 53 days from full registration.<sup>279</sup>

In practice, the fast-track border procedure has been variably implemented depending on the profile and nationality of the asylum seekers concerned (see also [Differential Treatment of Specific Nationalities in the Procedure](#)). Within the framework of that procedure:

- Applications by Syrian asylum seekers are examined on admissibility on the basis of the [Safe Third Country](#) concept;
- Applications by non-Syrian asylum seekers from countries with a recognition rate below 25% are examined only on the merits;
- Applications by non-Syrian asylum seekers from countries with a recognition rate over 25% are examined on both admissibility and merits (“merged procedure”).

### Exempted categories

According to Article 60(4)(f) L 4375/2016, the fast-track border procedure is not applied to vulnerable groups or persons falling within the family provisions of the Dublin III Regulation.<sup>280</sup> Pressure on the Greek authorities to abolish the existing exemptions from the fast-track border procedure and to “reduce the number of asylum seekers identified as vulnerable” continued to be reported in 2017.<sup>281</sup> However, a report published by Médecins Sans Frontières in July 2017 demonstrates that “far from being over-identified, vulnerable people are falling through the cracks and are not being adequately identified and cared for.”<sup>282</sup> For more information, see [Special Procedural Guarantees](#). The identification of vulnerability of persons arriving on the islands in the context of the fast-track border procedure on the islands takes place either by the RIS prior to the registration of the asylum application, or during the asylum procedure (see [Identification](#)).

In 2016, the Asylum Service issued a total of 5,075 decisions in the fast-track border procedure, of which 1,323 deemed the application inadmissible based on the safe third country concept, 1,476 exempted the applicant from the procedure pursuant to the Dublin III Regulation family provisions and 2,906 exempted the applicant for reasons of vulnerability.<sup>283</sup>

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<sup>277</sup> Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants on his mission to Greece*, A/HRC/35/25/Add.2, 24 April 2017, para 82.

<sup>278</sup> European Commission, *Seventh report on the progress made in the implementation of the EU-Turkey statement*, COM(2017) 470, 6 September 2017.

<sup>279</sup> Information provided by the Asylum Service, 15 February 2018.

<sup>280</sup> Article 60(4)(f) L 4375/2016, citing Articles 8-11 Dublin III Regulation and the categories of vulnerable persons defined in Article 14(8) L 4375/2016.

<sup>281</sup> Human Rights Watch, ‘EU/Greece: Pressure to minimise numbers of migrants identified as vulnerable’, 1 June 2017, available at: <http://bit.ly/2qD2fQb>; AIDA, *The concept of vulnerability in European asylum procedures*, September 2017, 17.

<sup>282</sup> MSF, *A dramatic deterioration for asylum seekers on Lesbos*, July 2017, 3.

<sup>283</sup> Information provided by the Asylum Service, 9 February 2017.



In 2017, the Asylum Service received 26,758 applications and issued the following decisions under the fast-track border procedure:

First instance decisions taken in the fast-track border procedure: 2017	
Decisions on admissibility	Number
Inadmissible based on safe third country	912
Admissible based on safe third country	365
Admissible pursuant to the Dublin III Regulation family provisions	3,123
Admissible for reasons of vulnerability	15,788
Decisions on the merits	Number
Refugee status	1,151
Subsidiary protection	225
Rejection on the merits	1,648
<b>Total decisions</b>	<b>23,212</b>

Source: Asylum Service, 15 February 2018.

This data should be read in conjunction with the profile of the persons arriving on the Greek islands in 2017, the vast majority of whom have lived through extreme violence and traumatic events. Out of the total number of 29,718 persons arriving in Greece by sea in 2017, the majority originated from Syria (42%), Iraq (20%) and Afghanistan (12%). Typically, these three nationalities arrive in family groups. More than half of the population were women (22%) and children (37%), while 41% were adult men. Moreover, arrivals have steadily increased after June 2017.<sup>284</sup> As reported by MSF, the newly arrived families from Iraq and Syria coming from newly freed areas were particularly traumatised and vulnerable.<sup>285</sup>

## 5.2. Personal interview

### Indicators: Fast-Track Border Procedure: Personal Interview

Same as regular procedure

- Is a personal interview of the asylum seeker in most cases conducted in practice in the border procedure?
 

	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If so, are questions limited to nationality, identity, travel route?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
❖ If so, are interpreters available in practice, for interviews?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
- Are interviews conducted through video conferencing?
 

<input type="checkbox"/> Frequently	<input type="checkbox"/> Rarely	<input checked="" type="checkbox"/> Never
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As mentioned in [Fast-Track Border Procedure: General](#), according to Article 60(4)(c) L 4375/2016, asylum seekers must prepare for the interview and consult a legal or other counsellor who shall assist them during the procedure within 1 day following the submission of their application for international protection. Decisions shall be issued, at the latest, the day following the conduct of the interview and shall be notified, at the latest, the day following its issuance.<sup>286</sup>

Under the fast-track border procedure, the personal interview may be conducted by Asylum Service staff or by EASO personnel. The competence of EASO to conduct interviews was introduced by an amendment to the law in June 2016, following an initial implementation period of the EU-Turkey statement marked by uncertainty as to the exact role of EASO officials, as well as the legal remit of their

<sup>284</sup> UNHCR, *Greece – Sea arrivals dashboard*, December 2017, available at: <http://bit.ly/2FmOjQD>.

<sup>285</sup> *Ibid.*

<sup>286</sup> Article 60(4)(d) L 4375/2016.

involvement in the asylum procedure. The EASO Special Operating Plan to Greece 2017 foresaw a role for EASO in conducting interviews in different asylum procedures, drafting opinions and recommending decisions to the Asylum Service throughout 2017.<sup>287</sup> A similar role is foreseen in the Operating Plan to Greece 2018.<sup>288</sup>

The content of the personal interview varies depending on the asylum seeker's nationality. Interviews of Syrians focus only on admissibility under the [Safe Third Country](#) concept and are limited to questions regarding their stay in Turkey. Non-Syrian applicants from countries with a recognition rate below 25% are only examined on the merits, in interviews which can be conducted by EASO caseworkers. Finally, non-Syrian applicants from countries with a rate over 25% undergo a so-called "merged interview", where the "safe third country" concept is examined together with the merits of the claim.

In practice, in cases where the interview is conducted by an EASO caseworker, he or she provides an opinion / recommendation (*πρόταση / εισήγηση*) on the case to the Asylum Service, that issues the decision. The transcript of the interview and the opinion / recommendation are written in English, which is not the official language of the country.<sup>289</sup>

Finally, a caseworker of the Asylum Service, without having had any direct contact with the applicant e.g. to ask further question, issues the decision based on the EASO record and recommendation.<sup>290</sup>

### Quality of interviews

The quality of interviews conducted by EASO caseworkers has been highly criticised and its compatibility even with EASO standards has been questioned. As reported by several NGOs, "EASO experts come from many different countries with different asylum systems and different levels of experience." This has resulted in quality gaps such as lack of knowledge about countries of origin, lack of cultural sensitivity, closed and suggestive questions, repetitive questions akin to interrogation, and unnecessarily exhaustive interviews.<sup>291</sup> In addition, in a number of cases, EASO caseworkers remain on the islands for one to two weeks, thereby not benefitting from sufficient time to adjust to the particularities of the working environment on the islands and the Greek asylum procedures.

Moreover, it has been underlined that: "EASO officers fail to give applicants the opportunity to clarify inconsistencies between their statements and information from other sources. Yet, these inconsistencies are systematically highlighted in EASO's concluding remarks to refute the applicant's account. In the most severe cases, the concluding remarks do not include crucial information on vulnerability raised by the applicant concerned."<sup>292</sup> Questions based on a predefined list, suspicion of the role of lawyers or conduct preventing lawyers from asking questions at the end of the interview, frequent interruptions of the interview for caseworkers to consult supervisors or the EASO vulnerability

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<sup>287</sup> EASO, *Special Operating Plan to Greece 2017*, December 2016, available at: <http://bit.ly/2h1M2dF>, 9.

<sup>288</sup> EASO, *Operating Plan to Greece 2018*, December 2017, available at: <http://bit.ly/2BO6EAo>, 14.

<sup>289</sup> This issue, among others, was brought before the Council of State, which ruled in September 2017 that the issuance of EASO opinions / recommendations in English rather than Greek does not amount to a procedural irregularity, insofar as it is justified by the delegation of duties to EASO under Greek law and does not result in adversely affecting the assessment of the applicant's statements in the interview. The Council of State noted that Appeals Committees are required to have good command of English according to Article 5(3) L 4375/2016: Council of State, Decisions 2347/2017 and 2348/2017, 22 September 2017, para 33.

<sup>290</sup> AIRE Centre, et al., *Third party intervention in J.B. v. Greece*, 4 October 2017, available at: <http://bit.ly/2qSRxoU>, 10-11.

<sup>291</sup> ActionAid et al., *Transitioning to a government-run refugee and migrant response in Greece*, December 2017, available at: <http://bit.ly/2DsdwCC>, 7; Norwegian Refugee Council et al., *The reality of the EU-Turkey statement: How Greece has become a testing ground for policies that erode protection for refugees*, March 2017, available at: <http://bit.ly/2E5n8cs>, 4.

<sup>292</sup> European Centre for Constitutional and Human Rights (ECCHR), *Case report Greece: EASO's influence on inadmissibility decisions exceeds the Agency's competence and disregards fundamental rights*, April 2017, available at: <http://bit.ly/2uhlhZF>, 3.

expert, as well as lack of audio recording of the interview in contravention of procedural standards have also been observed. GCR's experience corroborates these observations.

In particular, as regards Syrian applicants examined on admissibility, as a rule, questions asked during interview concern exclusively the circumstances that the applicant faced in Turkey. Therefore, applicants may not have the opportunity to refer to the reasons for fleeing their country of origin and potential vulnerabilities linked to these reasons e.g. being a victim of torture.

The United Nations Special Rapporteur on human rights of migrants has also underlined that: "[p]rovisions under the fast track regime are problematic due to the lack of individual assessment of each case, and the risk of violating the non-refoulement principle is consequently very high."<sup>293</sup>

Finally, as regards the lawfulness of the involvement of the EASO personnel in the first instance procedure, the issuance of an opinion / recommendation by EASO personnel to the Asylum Service is not foreseen by any provision in national law and thus lacks legal basis.<sup>294</sup> Nevertheless, the Council of State found in September 2017 that the functions performed by EASO are in line with L 4375/2016 and the EASO Regulation.<sup>295</sup>

In this context, EASO's involvement in the process is under examination by the European Ombudsman, following a complaint submitted by the European Centre for Constitutional and Human Rights (ECCHR) in April 2017.<sup>296</sup> According to the complaint:

"EASO officers exercise *de facto* power on decisions in relation to applications for international protection by conducting admissibility interviews and making recommendations... EASO's involvement in the decision making process of applications for international protection has no legal basis in the applicable Regulation (EU) No 439/2010 establishing the agency. To the contrary, the Regulation limits EASO's competences: 'The Support Office shall have no direct or indirect powers in relation to the taking of decisions by Member States' asylum authorities on individual applications for international protection' (Preamble §14 and Art2(6))."<sup>297</sup>

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<sup>293</sup> Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants on his mission to Greece*, 24 April 2017, para 82.

<sup>294</sup> Article 60(4)(b) L 4375/2016 only refers to the conduct of interviews by EASO staff.

<sup>295</sup> Council of State, Decisions 2347/2017 and 2348/2017, 22 September 2017, para 33. The Council of State referred to Articles 14(1) and 34(2) recast Asylum Procedures Directive, which however refer to the possibility for "the personnel of another authority to be temporarily involved" and do not mention EASO.

<sup>296</sup> European Ombudsman, Case 735/2017/MHZ, July 2017, "EASO's involvement in applications for international protection submitted in the 'hotspots' in Greece", Case 735/2017/MHZ, 13 July 2017, available at: <http://bit.ly/2GEFYpg>; ECCHR, *Case report Greece: EASO's influence on inadmissibility decisions exceeds the Agency's competence and disregards fundamental rights*, April 2017.

<sup>297</sup> *Ibid.*

### 5.3. Appeal

#### Indicators: Fast-Track Border Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the border procedure?

- ❖ If yes, is it
- ❖ If yes, is it suspensive

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Judicial	<input checked="" type="checkbox"/> Administrative
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

#### 5.3.1. Changes in the Appeals Committees

The legal basis for the establishment of the Appeals Authority was amended twice in 2016 by L 4375/2016 in April 2016 and L 4399/2016 in June 2016, and then in 2017 by L 4661/2017 (see [Regular Procedure: Appeal](#)). These amendments are closely linked with the examination of appeals under the fast-track border procedure, following reported pressure to the Greek authorities from the EU on the implementation of the EU-Turkey statement,<sup>298</sup> and “coincide with the issuance of positive decisions of the – at that time operational – Appeals Committees (with regard to their judgment on the admissibility) which, under individualised appeals examination, decided that Turkey is not a safe third country for the appellants in question”,<sup>299</sup> as highlighted by the National Commission on Human Rights regarding L 4399/2016.

#### 5.3.2. Rules and time limits for appeal

As with the first instance fast-track border procedure, truncated time limits are also foreseen in the appeal stage. According to Article 60(4) L 4375/2016, appeals against decisions taken in the fast-track border procedure must be submitted before the Appeals Authority within 5 days,<sup>300</sup> contrary to 30 days in the regular procedure. Appeals before the Appeals Committees have automatic suspensive effect.<sup>301</sup>

However, the right to appeal in the fast-track border procedure has been further curtailed by a Police Circular issued in April 2017.<sup>302</sup> In line with the recommendations of the European Commission’s Joint Action Plan of 8 December 2016 to “remove administrative obstacles to swift voluntary return from the islands”,<sup>303</sup> upon receipt of a negative first instance decision, asylum seekers have either the right to appeal the decision or forego the appeal and benefit from Assisted Voluntary Return and Reintegration (AVRR) provided by the International Organisation for Migration (IOM). If they opt for an appeal, they lose the possibility of future AVRR. Fifteen organisations have denounced this policy for jeopardising the right to a fair asylum process under EU law as well as the right to return to one’s own country.<sup>304</sup>

<sup>298</sup> See e.g. NCHR, ‘Δημόσια Δήλωση για την τροπολογία που αλλάζει τη σύνθεση των Ανεξάρτητων Επιτροπών Προσφυγών’, 17 June 2016, available in Greek at: <http://bit.ly/2k1Buhz>.

<sup>299</sup> NCHR, ‘Public Statement regarding the amendment of the composition of the Independence Appeals Committees’, 17 June 2016, available at: <http://bit.ly/2k1Buhz>. Unofficial translation by the author.

<sup>300</sup> Article 61(1)(d) L 4375/2016.

<sup>301</sup> Article 61(4) L 4375/2016, as amended by L 4399/2016.

<sup>302</sup> Hellenic Police, ‘Υλοποίηση Κοινής Δήλωσης Ε.Ε.-Τουρκίας (Βρυξέλλες, 18-03-2016) -Συμμετοχή αλλοδαπών υπηκόων αιτούντων τη χορήγηση καθεστώτος διεθνούς προστασίας στα προγράμματα οικειοθελούς επαναπατρισμού του Διεθνούς Οργανισμού Μετανάστευσης (Δ.Ο.Μ.)’, Circular 1604/17/681730, 3 April 2017, available in Greek at: <http://bit.ly/2E8Mlmr>.

<sup>303</sup> European Commission, *Joint Action Plan of the EU Coordinator on the implementation of certain provisions of the EU-Turkey Statement*, Annex 1 to COM(2016) 792, 8 December 2016, para 13.

<sup>304</sup> ActionAid et al., ‘15 NGOs Decry New Policy Limiting Asylum Seekers in Exercising their Right to Appeal’, 9 May 2017, available at: <http://bit.ly/2BPlcj7>.

The Appeals Committee examining the appeal must take a decision within 3 days,<sup>305</sup> contrary to 3 months in the regular procedure. However, as mentioned in [Fast-Track Border Procedure: General](#), the decision-making process before the Appeals Committees is considerably slow.<sup>306</sup>

As a rule, the procedure before the Appeals Committees under Article 60(4) is written. It is for the Appeals Committee to request an oral hearing under the same conditions as in the regular procedure.

In 2016, the overwhelming majority of second instance decisions by the Backlog Appeals Committees overturned the first instance inadmissibility decisions based on the safe third country concept. The Special Rapporteur on the human rights of migrants “commended the independence of the Committee, which, in the absence of sufficient guarantees, refused to accept the blanket statement that Turkey is a safe third country for all migrants — despite enormous pressure from the European Commission.”<sup>307</sup>

On the contrary, 98.2% of decisions issued by the Independent Appeals Committees in 2017 have upheld the first instance inadmissibility decisions on the basis of the safe third country concept.

As regards decisions on admissibility issued at second instance since the application of the fast-track border procedure, figures are as follows:

Decisions on appeals against inadmissibility in the fast-track border procedure	
Type of decision	Number
Reversing the first instance decision	7
Upholding the first instance decision	394
<b>Total decisions on admissibility</b>	<b>401</b>

Source: Appeals Authority, 6 February 2018.

Moreover, there have been 282 decisions on appeals which annulled the first instance decision on inadmissibility and referred the case back to the Asylum Service for reasons of vulnerability and 286 cases which have been repealed as the first instance decision has been revoked for reasons of vulnerability.<sup>308</sup>

### 5.3.3. Judicial review

The general provisions regarding the judicial review are also applicable for judicial review issued within the framework of the fast-track border procedure and concerns raised with regard to the effectiveness of the remedy are equally valid (see [Regular Procedure: Appeal](#)). Thus, among others, the application for annulment before the Administrative Court of Appeal does not have automatic suspensive effect, even if combined with an application for suspension and a request for an interim order. Suspensive effect is only granted by a relevant decision of the Court. This judicial procedure before the Administrative Courts of Appeal is not accessible to asylum seekers without legal representation.

Moreover, according to practice, appellants whose appeals are rejected within the framework of the fast-track border procedure are immediately detained upon the notification of the second instance negative decision and face an imminent risk of readmission to Turkey.

<sup>305</sup> Article 60(4)(e) L 4375/2016.

<sup>306</sup> European Commission, *Seventh report on the progress made in the implementation of the EU-Turkey statement*, COM(2017) 470, 6 September 2017.

<sup>307</sup> Human Rights Council, *Report of the Special rapporteur on the human rights of migrants on his mission to Greece*, A/HRC/35/25/Add.2, 24 April 2017, para 85.

<sup>308</sup> Information provided by the Appeals Authority, 6 February 2018.

Given the constraints that detained persons face vis-à-vis access to legal assistance, the fact that legal aid is not foreseen by law at this stage and that an onward appeal can only be submitted by a lawyer, access to judicial review for applicants receiving a second instance negative decision within the framework of the fast-track border procedure is severely hindered (see [Legal Assistance for Review of Detention](#)).

In this respect, it should be mentioned that the ECtHR granted interim measures under Rule 39 of the Rules of the Court in two cases in 2017, in order to prevent the return of asylum seekers rejected in the fast-track border procedure to Turkey. The applicants were an Iranian national,<sup>309</sup> and a Pakistani national of the Ahmadi minority respectively,<sup>310</sup> whose claims were rejected at first and second instance and who had filed applications for annulment and applications for suspension before the court. Since automatic suspensive effect is not guaranteed by the domestic remedy, their readmission to Turkey was prevented only after the interim measures granted by the Strasbourg Court.

In particular, in the case of the Pakistani national, supported by GCR, the ECtHR initially requested the Greek authorities to suspend his return in June 2017 until the issuance of the decision on suspensive effect by the Administrative Court of Mytilene. However, as the domestic court rejected the application for suspension in October 2017, following a request from the applicant, the ECtHR granted a new interim measure to suspend removal.<sup>311</sup> As it appears from the procedure before the Administrative Court of Mytilene, the domestic court failed to provide an effective remedy to the applicant.

#### 5.4. Legal assistance

##### Indicators: Fast-Track Border Procedure: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?
 

<input type="checkbox"/> Yes	<input type="checkbox"/> With difficulty	<input checked="" type="checkbox"/> No
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  - ❖ Does free legal assistance cover:
 

<input type="checkbox"/> Representation in interview
<input type="checkbox"/> Legal advice
  
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?
 

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> With difficulty	<input type="checkbox"/> No
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  - ❖ Does free legal assistance cover
 

<input type="checkbox"/> Representation in courts
<input checked="" type="checkbox"/> Legal advice

The law does not contain special provisions regarding free legal assistance in the fast-track border procedure. The general provisions regarding legal aid are also applicable here (see section on [Regular Procedure: Legal Assistance](#)).

State-funded legal aid is not provided for the fast-track border procedure at first instance. Therefore, legal assistance at first instance is made available only by NGOs based on capacity and areas of operation, while the scope of these services remains limited, bearing in mind the number of applicants subject to the fast-track border procedure.

As regards the second instance, four lawyers are operating under the state-funded legal aid scheme launched on 21 September 2017. This includes one lawyer in **Lesvos**, one in **Rhodes**, one in **Chios** and one in **Kos**. By the end of the year, these lawyers had dealt with the following number of cases:

<sup>309</sup> Efsyn, 'Μήνυμα ΕΔΔΑ κατά των απελάσεων', 2 May 2017, available in Greek at: <http://bit.ly/2mYuS6s>.

<sup>310</sup> AIDA, 'Greece: Strasbourg Court halts return of rejected asylum seeker to Turkey', 27 June 2017, available at: <http://bit.ly/2spRtZr>.

<sup>311</sup> GCR, 'Το Ευρωπαϊκό Δικαστήριο των Δικαιωμάτων του Ανθρώπου χορηγεί εκ νέου ασφαλιστικά μέτρα, αναστέλλοντας την απέλαση Πακιστανού πρόσφυγα, μετά την απόρριψη της αίτησης αναστολής του από το Διοικητικό Πρωτοδικείο Μυτιλήνης', 6 November 2017, available in Greek at: <http://bit.ly/2GHuHom>.



State-funded legal assistance on the islands: 21 September – 31 December 2017		
Location	Number of lawyers	Number of cases handled
Lesvos	1	44
Chios	1	40
Kos	1	33
Rhodes	1	50
<b>Total</b>	<b>4</b>	<b>167</b>

Source: Asylum Service, 15 February 2018

Metadrasi is also implementing a UNHCR-funded programme for the provision of free legal assistance in the appeal procedure for appellants remaining on the islands, who are subject to EU-Turkey statement and have their appeals examined under the fast-track border procedure (see [Regular Procedure: Legal Assistance](#)).

## 6. Accelerated procedure

### 6.1. General (scope, grounds for accelerated procedures, time limits)

According to L 4375/2016 the basic principles and guarantees applicable to the regular procedure are also applied to the accelerated procedure. In particular, it makes clear that “the accelerated procedure shall have as a sole effect to reduce the time limits” for taking a decision.<sup>312</sup>

The examination of an application under the accelerated procedure must be concluded within 3 months,<sup>313</sup> although the possibility to extend the time limits applies as in the [Regular Procedure](#). The Asylum Service is in charge of taking first instance decisions for both regular and accelerated procedures.

An application is being examined under the accelerated procedure when:<sup>314</sup>

- (a) The applicant comes from a [Safe Country of Origin](#);<sup>315</sup>
- (b) The application is manifestly unfounded. An application is characterised as manifestly unfounded where the applicant, during the submission of the application and the conduct of the personal interview, invokes reasons that manifestly do not comply with the status of refugee or of subsidiary protection, or where he or she has presented manifestly inconsistent or contradictory information, manifest lies or manifestly improbable information, or information which is contrary to adequately substantiated information on his or her country of origin, which renders his or her statements of fearing persecution under PD 141/2013 as clearly unconvincing;
- (c) The applicant has misled the authorities by presenting false information or documents or by withholding relevant information or documents regarding his/her identity and/or nationality which could adversely affect the decision;
- (d) The applicant has likely destroyed or disposed in bad faith documents of identity or travel which would help determine his/her identity or nationality;
- (e) The applicant has submitted the application only to delay or impede the enforcement of an earlier or imminent deportation decision or removal by other means;
- (f) The applicant refuses to comply with the obligation to have his or her fingerprints taken.

<sup>312</sup> Article 51(1) L 4375/2016.

<sup>313</sup> Article 51(2) L 4375/2016.

<sup>314</sup> Article 51(7) L 4375/2016.

<sup>315</sup> Article 57 L 4375/2016.



L 4375/2016 has marked some improvement compared to the previous PD 113/2013, as Article 51(7) no longer permits the use of the accelerated procedure for applicants who fail to comply with any of the obligations to cooperate with the authorities; or where the applicant has not provided information establishing, with a reasonable degree of certainty, his or her identity or nationality; or where the application had been submitted by an unmarried minor for whom an application had already been submitted by his or her parent(s) and was rejected, and the applicant had not invoked new substantial elements regarding his or her personal situation or the situation in his or her country of origin.

The number of asylum applications subject to the accelerated procedure in 2017 is not available.<sup>316</sup>

## 6.2. Personal interview

### Indicators: Accelerated Procedure: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the accelerated procedure?  Yes  No
  - ❖ If so, are questions limited to nationality, identity, travel route?  Yes  No
  - ❖ If so, are interpreters available in practice, for interviews?  Yes  No
2. Are interviews conducted through video conferencing?  Frequently  Rarely  Never

The conduct of the personal interview does not differ depending on whether the accelerated or regular procedure is applied (see section on [Regular Procedure: Personal Interview](#)).

## 6.3. Appeal

### Indicators: Accelerated Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the accelerated procedure?
 

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Judicial	<input checked="" type="checkbox"/> Administrative
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

  - ❖ If yes, is it
  - ❖ If yes, is it suspensive

The time limit for lodging an appeal against a decision in the accelerated procedure is 15 days,<sup>317</sup> as opposed to 30 days under the regular procedure.

The examination of the appeal shall be carried out at the earliest 10 days after the submission of the appeal.<sup>318</sup> The Appeals Authority Committee must reach a decision on the appeal within 2 months.<sup>319</sup>

<sup>316</sup> Information provided by the Asylum Service, 15 February 2018.

<sup>317</sup> Article 61(1)(b) L 4375/2016.

<sup>318</sup> Article 62(2)(b) L 4375/2016.

<sup>319</sup> Article 62(6) L 4375/2016.

## 6.4. Legal assistance

### Indicators: Accelerated Procedure: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?  
 Yes       With difficulty       No  
❖ Does free legal assistance cover:  
 Representation in interview  
 Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?  
 Yes       With difficulty       No  
❖ Does free legal assistance cover  
 Representation in courts  
 Legal advice

The same legal provisions and practice apply to both the regular and the accelerated procedure (see [Regular Procedure: Legal Assistance](#)).

## D. Guarantees for vulnerable groups

### 1. Identification

#### Indicators: Identification

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers?  
 Yes       For certain categories       No  
❖ If for certain categories, specify which:
2. Does the law provide for an identification mechanism for unaccompanied children?  
 Yes       No

According to Article 14(8) L 4375/2016, relating to **reception and identification** procedures offered principally to **newcomers**, the following groups are considered as vulnerable groups: unaccompanied minors; persons who have a disability or suffering from an incurable or serious illness; the elderly; women in pregnancy or having recently given birth; single parents with minor children; victims of torture, rape or other serious forms of psychological, physical or sexual violence or exploitation; persons with a post-traumatic disorder, in particular survivors and relatives of victims of ship-wrecks; victims of human trafficking. Some aspects of this definition, namely as regards persons with post-traumatic stress disorder (PTSD) have been debated due to the [Special Procedural Guarantees](#) offered in the context of the [Fast-Track Border Procedure](#).<sup>320</sup>

According to L 4375/2016, whether an applicant is in **need of special procedural guarantees** is for the Asylum Service to assess “within a reasonable period of time after an application for international protection is made, or at any point of the procedure the relevant need arises, whether the applicant is in need of special procedural guarantees” which is in particular the case “when there are indications or claims that he or she is a victim of torture, rape or other serious forms of psychological, physical or sexual violence.”<sup>321</sup>

The number of asylum seekers registered by the Asylum Service as vulnerable in 2017 is as follows:

<sup>275</sup> See General Commission of Administrative Courts, ‘Proposals regarding the acceleration of the asylum procedure’, 14 November 2017, available in Greek at: <http://bit.ly/2rYpmpk>; ECRE, ‘Greek judges recommend legal restrictions to accelerate procedure on the islands’, 24 November 2017, <http://bit.ly/2hRbIC3>.

<sup>276</sup> Article 50(2) L 4375/2016.

Vulnerable persons registered among asylum seekers: 2017		
Category of vulnerability	Applicants	Pending
Unaccompanied children	2,275	1,923
Persons suffering from disability or a serious or incurable illness	970	739
Pregnant women / new mothers	645	444
Single parents with minor children	472	286
Victims of torture, rape or other serious forms of violence or exploitation	454	282
Elderly persons	60	51
Victims of human trafficking	4	3
<b>Total</b>	<b>4,880</b>	<b>3,728</b>

Source: Asylum Service, 15 February 2018. Overlap in some cases is due to applicants falling in multiple vulnerability categories.

The number and type of decisions taken at first instance on cases by vulnerable applicants are as follows:

First instance decisions on applications by vulnerable persons: 2017					
Category	Refugee status	Subsidiary protection	Rejection	Rate	Inadmissibility
Unaccompanied children	160	27	493	<b>27.5%</b>	740
Persons suffering from disability or a serious or incurable illness	161	27	191	<b>49.6%</b>	377
Pregnant women / new mothers	145	11	99	<b>61.1%</b>	301
Single parents with minor children	117	14	12	<b>91.6%</b>	350
Victims of torture, rape or other serious forms of violence or exploitation	128	4	31	<b>80.9%</b>	92
Elderly persons	15	3	5	<b>78.2%</b>	72
Victims of human trafficking	2	0	0	<b>100%</b>	:

Source: Asylum Service, 15 February 2018. Inadmissibility decisions include: safe third country; Dublin cases; relocation cases; subsequent applications and other inadmissibility grounds.

### 1.1. Screening of vulnerability

The law provides that:

“The Manager of [RIC] or the Unit, acting on a proposal of the Head of the medical screening and psychosocial support unit shall refer persons belonging to vulnerable groups to the competent social support and protection institution. A copy of the medical screening and psychosocial support file shall be sent to the Head of the Open Temporary Reception or Accommodation Structure or competent social support and protection institution, as per case, where the person is being referred to. In all cases the continuity of the medical treatment followed shall be ensured, where necessary.”

### 1.1.1. Vulnerability identification on the islands

The identification of vulnerability of persons arriving on the islands in the context of the [Fast-Track Border Procedure](#) on the islands takes place either by the RIS prior to the registration of the asylum application, or during the asylum procedure.

#### Vulnerability identification by the RIS

The RIS had outsourced medical and psychological care provision to NGOs, namely Doctors of the World, PRAKSIS and MedIn. In the course of 2017, serious gaps have been reported in the vulnerability assessment by the RIS. These have been exacerbated in mid-2017 due to the transfer of responsibility for health services from NGOs to state actors such as the Ministry of Health and the Centre of Disease Control and Prevention (KEELPNO).<sup>322</sup> Due to considerable delays and at times dysfunctional identification processes, a considerable number of asylum seekers were subjected to an asylum interview, including by EASO caseworkers, without their vulnerability having been assessed.<sup>323</sup>

More specifically, the contracts between RIS and NGOs expired at the end of March 2017.<sup>324</sup> However, no appropriate planning and preparation had taken place, due to which takeover of such services by KEELPNO was not feasible at the time. Even though the Greek authorities had proposed an extension of the contract period, this proposal was made late, thereby not allowing the smooth continuation of the provision of medical and psychological services. In particular, the service contracts most NGOs had signed with the Ministry of Migration Policy expired at the end of May, resulting in a huge service gap that was filled temporarily and partially by the Hellenic Red Cross' limited capacity, until KEELPNO was able to start the takeover by mid-August 2017.<sup>325</sup>

Gaps in the provision of services, coupled with a shortage in human resources,<sup>326</sup> led to a significant reduction in capacity to conduct vulnerability screening in the reception and identification procedure, as well as to provide out-patient consultations.<sup>327</sup> As reported, on certain occasions e.g. on **Lesvos** and **Samos** during March 2017, the RIS completed the procedure without having assessed potential vulnerabilities and only persons with evident vulnerabilities were subject to medical and psychological assessments and offered assistance. The rest received no assessment unless they so requested, and even in such cases newcomers without evident vulnerabilities were not provided assessments due to these gaps.<sup>328</sup>

Additionally, serious concerns have been raised with regard to the quality of the vulnerability screening procedures, notably on the identification of non-evident vulnerabilities. These stem from inadequate training of staff carrying out vulnerability screening, as well as poor investment of time and resources for effective identification and referral of vulnerable persons to protection organisations to ensure their transfer to the mainland.<sup>329</sup> As noted by MSF, "far from being over-identified, vulnerable people are falling through the cracks and are not being adequately identified and cared for."<sup>330</sup> In particular, out of

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<sup>322</sup> AIDA, *The concept of vulnerability in European asylum procedures*, September 2017, available at: <http://bit.ly/2EzAv2D>, 25.

<sup>323</sup> *Ibid*, 30.

<sup>324</sup> Empros Net, 'Με προσωπικό ασφαλείας οι «Γιατροί του Κόσμου»', 5 April 2017, available in Greek at: <http://bit.ly/2FI8Fkc>.

<sup>325</sup> Refugee Support Aegean, 'Serious gaps in the care of refugees in Greek hotspots; Vulnerability assessment system is breaking down', 17 July 2017, available at: <http://bit.ly/2FFb2nT>.

<sup>326</sup> AIDA, 'Update on the implementation of the hotspots in Greece and Italy', 23 April 2017, available at: <http://bit.ly/2FKkmqw>.

<sup>327</sup> MSF, *A dramatic deterioration for asylum seekers on Lesvos*, July 2017, 10.

<sup>328</sup> AIDA, 'Update on the implementation of the hotspots in Greece and Italy', 23 April 2017, available at: <http://bit.ly/2FKkmqw>.

<sup>329</sup> MSF, *One year on from the EU-Turkey deal: Challenging the EU's alternative facts*, March 2017, available at: <http://bit.ly/2tR6pWG>, 17.

<sup>330</sup> MSF, *A dramatic deterioration for asylum seekers on Lesvos*, July 2017, 3.

the total number of cases referred to the MSF clinic on **Lesvos**, almost 70% belonged to a vulnerable group that had not been recognised as such by the authorities: victims of torture, ill-treatment or sexual violence, persons suffering from PTSD and other serious mental health disorders. Less than 15% of people suffering from serious mental health conditions and less than 30% of victims of torture had been identified as vulnerable.<sup>331</sup>

The lack of a uniform practice with regard to referrals to the medical and psychological units of the RIS following registration has also been witnessed. This was the case on **Chios** during September 2017 when arrival rates were relatively high and newly arrived persons suffered delays of up to two months until they could access medical and psychological services. On **Samos** on the contrary, the reception and identification procedures, including medical and psychosocial screening, were conducted very briefly, thereby running the risk of omitting non-evident vulnerabilities. GCR has repeatedly reported that the outcome of the vulnerability assessment by medical experts and the psychosocial unit of the RIC of **Samos** is not uploaded on the electronic database of the RIC, while neither the applicant nor his or her lawyer have access to the document. Accordingly, the vulnerability assessment is not taken into account in subsequent procedures, for instance the fast-track border procedure.

### **“Medium” and “high” vulnerability: the new vulnerability template**

A new medical vulnerability template, entitled “Form for the medical and psychosocial evaluation of vulnerability”, has been adopted by KEELPNO as of the end of 2017 and early 2018.<sup>332</sup> This template introduces two levels of vulnerability:

- a. Medium vulnerability, which could develop if no precautionary measures are introduced;
- b. High vulnerability, when the occurrence of vulnerability is obvious and the continuation of the evaluation and the adoption of a care plan are recommended. Further referral is needed for immediate support.

The classification of a case as “medium” or “high” vulnerability is decided by the medical unit of each RIC on the islands.

Even if the distinction between “medium” and “high” vulnerability concerns the medical terminology used and the support that the person should receive, this vulnerability assessment procedure is used in a way in practice which underestimates vulnerabilities classified as “medium”, despite the fact that such a distinction is not provided by law. As observed by GCR and other actors in the field, cases classified as “medium” vulnerability not being uploaded on the electronic database of the RIC and thus not being taken into consideration; further assessment is requested instead. However, given the backlog of cases before the medical and psychological services on the islands, it is not clear whether persons with identified “medium” vulnerabilities can benefit from further assessment and care.

Furthermore, GCR is also aware of classifications of “medium” vulnerability being given to cases such as victims of sexual violence or other vulnerability categories expressly mentioned in Greek law. Failure to upload the assessment documents on the system and to directly refer people to specialised care in those cases risks depriving them of the [Special Procedural Guarantees](#) they are entitled to under the law.

Finally, while no RIC uploads assessment documents for “medium” vulnerability cases on the system, the RIC of **Samos** has also failed to upload documents for “high” vulnerability cases in some instances.

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<sup>331</sup> *Ibid.*

<sup>332</sup> European Commission, *Progress report on the Joint Action Plan on the implementation of the EU-Turkey statement*, Annex 2, COM(2017) 669, 15 November 2017.

## Vulnerability identification in the asylum procedure

When vulnerability is not identified in the assessment made by the RIS but during registration of the asylum application or the interview,

- i. If the procedure is conducted by an EASO caseworker, he or she is required to refer the case to an EASO vulnerability expert, who drafts an opinion.
- ii. If the procedure is conducted by an Asylum Service caseworker, it is at his or her discretion to refer the case to an EASO vulnerability expert, to refer the case to the vulnerability identification procedures conducted by the RIS,<sup>333</sup> or to channel the case directly into the regular procedure if he or she cannot take a decision on vulnerability.

Accordingly, where vulnerability is not identified prior to the asylum procedure, the initiation of a vulnerability assessment lies to a great extent at the discretion of the caseworker. As mentioned above, *inter alia* due to significant gaps in the provision of reception and identification procedures in 2017 due to the transfer of responsibility for health services from NGOs to state actors, to considerable delays and at times dysfunctional identification processes,<sup>334</sup> a considerable number of asylum seekers were subjected to an asylum interview, including by EASO caseworkers, without their vulnerability having been assessed. As a result, indications of vulnerability have often surfaced during admissibility interviews conducted by EASO staff, who *de facto* play a crucial role in identifying and determining vulnerability and therefore the provision of [Special Procedural Guarantees](#).<sup>335</sup> It is for this reason that compliance with the Agency's mandate under the EASO Regulation should also be examined as regards its involvement in the vulnerability assessment procedure (see [Fast-Track Border Procedure](#)).

In addition, it should be mentioned that:

- An EASO vulnerability expert is not always available in practice, meaning that significant delays can occur. As reported on **Lesvos** in July 2017, for example, "EASO has 7 vulnerability experts with a significant backlog of cases, thus when a case is eventually referred to their vulnerability expert, it will take approximately 3 months until an opinion is issued for approval to the Greek Asylum Service."<sup>336</sup>
- The vulnerability assessment and drafting of an opinion by an EASO vulnerability expert are not clearly set out in any provision of Greek law,<sup>337</sup> and it is not clear whether such assessments take into consideration the relevant provisions and safeguards under national law.<sup>338</sup>
- The professional background and the level of expertise of EASO vulnerability experts deployed in Greece is not known, while concerns have been raised as to the feasibility of thorough investigations on asylum seekers' vulnerabilities in the context of the [Fast-Track Border Procedure](#) and as to whether vulnerability indications and/or relevant allegations of the applicant are properly assessed.<sup>339</sup> As reported, in some cases "strong indications of vulnerability have been ignored" in interviews conducted by EASO.<sup>340</sup>

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<sup>333</sup> Information provided by the Asylum Service, 21 July 2017.

<sup>334</sup> AIDA, *The concept of vulnerability in European asylum procedures*, September 2017, available at: <http://bit.ly/2EzAv2D>, 25.

<sup>335</sup> *Ibid*, 30.

<sup>336</sup> MSF, *A dramatic deterioration for asylum seekers in Lesvos*, July 2017, 13.

<sup>337</sup> Article 60(4)(b) L 4375/2016 provides that EASO staff may conduct a personal interview, but does not mention vulnerability assessments.

<sup>338</sup> Article 14(8) L 4375/2016.

<sup>339</sup> AIDA, *The concept of vulnerability in European asylum procedures*, September 2017, 30; ECCHR, *Case report Greece: EASO's influence on inadmissibility decisions exceeds the Agency's competence and disregards fundamental rights*, April 2017, available at: <http://bit.ly/2uhlhZF>.

<sup>340</sup> AIDA, *The concept of vulnerability in European asylum procedures*, September 2017, 30; Ombudsman, *Migration flows and refugee protection: Administrative challenges and human rights*, Special Report 2017, 31.



- The vulnerability expert has no direct access to the applicant. The vulnerability assessment only takes place on the basis of the documents on the file of the applicant.

### 1.1.2. Vulnerability identification in the mainland

In **Athens**, vulnerable groups are referred to the Municipality of Athens Centre for Reception and Solidarity in Frouarchion. In 2017, a total of 2,841 cases were registered there.<sup>341</sup>

The authorities competent for reception and housing or for reception and examination of an asylum application must ensure that persons who have been subjected to torture, rape or other serious acts of violence shall be referred to specialised units, in order to receive the necessary support and treatment for the trauma inflicted by the aforementioned acts.<sup>342</sup> This referral should preferably take place before the personal interview on the asylum claim.

In case that indications or claims as of past persecution or serious harm arise, the Asylum Service refers the applicant for a medical and/or psychosocial examination, which should be conducted free of charge and by specialised scientific personnel of the respective specialisation.<sup>343</sup> Otherwise, the applicant must be informed that he or she may be subjected to such examinations at his or her own initiative and expenses. Any results and reports of such examinations must be taken into consideration by the Asylum Service.<sup>344</sup>

However, currently there are no public health structures specialised in identifying or assisting torture survivors in their rehabilitation process. As a result, it is for the NGOs running relative specialised programmes to handle the identification and rehabilitation of victims of torture. This is rather problematic for reasons that concern the sustainability of the system, given the fact that NGOs' relevant funding is often interrupted.

In **Athens**, torture survivors may be referred for identification purposes to **Metadrasi**, whose service had stopped for a substantial period of time due to lack of funding before restarting. However, the duration of the project is uncertain and dependent on funding. Rehabilitation of victims of torture is also provided by GCR and **Day Centre Babel** ("Prometheus" project – Rehabilitation Unit for Victims of Torture) in cooperation with MSF. Funding of the Rehabilitation Unit also depends on availability of funds by other organisations and is scarce.

## 1.2. Age assessment of unaccompanied children

Ministerial Decision 92490/2013 lays down the age assessment procedure in the context of reception and identification procedures. Moreover, Joint Ministerial Decision 1982/2016 provides for an age assessment procedure for persons seeking international protection before the Asylum Service,<sup>345</sup> as well as persons whose case is still pending before the authorities of the "old procedure".<sup>346</sup> However, the scope of these decisions does not extend to age assessment of unaccompanied children under the responsibility of the Hellenic Police (see **Detention of Vulnerable Applicants**).

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<sup>341</sup> Information provided by the Asylum Service, 15 February 2018.

<sup>342</sup> Article 20 PD 220/2007.

<sup>343</sup> Article 52 L 4375/2016.

<sup>344</sup> Article 53 L 4375/2016.

<sup>345</sup> Joint Ministerial Decision 1982/2016, Gov. Gazette B'335/16-2-2016.

<sup>346</sup> Article 22(A)11 JMD 1982/2016, citing Article 34(1) PD 113/2013 and Article 12(4) PD 114/2010.



### 1.2.1. Age assessment by the RIS

On 29 October 2013, a Ministerial Decision of the Minister of Health established for the first time in Greece an age assessment procedure applicable within the context of the (then) First Reception Service (FRS).<sup>347</sup>

According to the MD 92490/2013, in case where there is specifically justified doubt as to the age of the third-country national, and the person may possibly be a minor, then the person is referred to the medical control and psychosocial support team for an age assessment. Initially, the age assessment will be based on macroscopic features (i.e. physical appearance) such as height, weight, body mass index, voice and hair growth, following a clinical examination from a paediatrician, who will consider body-metric data. The paediatrician will justify his or her final estimation based on the aforementioned examination data and observations. In case the person's age cannot be adequately determined through the examination of macroscopic features, an assessment by the psychologist and the social worker of the division will follow in order to evaluate the cognitive, behavioural and psychological development of the individual. The psychosocial divisions' evaluation report will be submitted in writing. Wherever a paediatrician is not available or when the interdisciplinary staff cannot reach any firm conclusions, and only as a measure of last resort, the person will be referred to a public hospital for specialised medical examinations such as dental or wrist X-rays, which will be clearly explained to him or her as far as their aims and means are concerned.

This provision should be considered as a very positive development, as before MD 92490/2013 entered into force no legal framework determining the age assessment procedure existed in Greece and medical examinations were the only method used. It should be borne in mind that medical examinations to assess the age of a person entail a considerable margin of error and are therefore unreliable.

The estimations and the assessment results are delivered to the Head of the medical and psychosocial unit, who recommends to the Head of the RIC the official registration of age, noting also the reasons and the evidence supporting the relevant conclusion.

In practice, the age assessment of unaccompanied children is an extremely challenging process and does not always follow the MD 92490/2013 procedure, according to GCR findings.

After the age assessment procedure is completed, the individual should be informed in a language he or she understands about the content of the age assessment decision, against which he or she has the right to appeal, in accordance with the Code of Administrative Procedure, submitting the appeal to the Secretariat of the RIC within 10 days from the notification of the decision on age assessment.

However, persons claiming to be underage, who have yet been registered as adults, report that they face practical difficulties in receiving identification documents proving their age within this 10-day period, given the fact that they are restricted in the reception and identification facilities. Also, although the possibility to receive mails is provided by the RIS, problems have been reported in practice regarding applicants' proper access to their correspondence. As a result, having access to identification documents sent via email before the 10-day time limit is not always possible.

These appeals are in practice examined by the Central RIS. GCR is aware of appeals that were rejected, although the first instance decision regarding age assessment was based on findings reached after following a procedure that was not the one provided by the MD. In addition, the Central RIS rejects appeals supported by documents offering evidence regarding the appellant's age, if these are not

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<sup>347</sup> Ministerial Decision n. Y1.Γ.Π.οικ. 92490/2013 "Programme for medical examination, psychosocial diagnosis and support and referral of entering without legal documentation third country nationals, in first reception facilities".

officially translated or verified, disregarding the proven and objective difficulties of applicants to verify or officially translate the supporting documents and to generally have access to legal assistance. No data are available regarding the number of such decisions challenged before the RIS and their outcome.

### 1.2.2. Age assessment in the asylum procedure

L 4375/2016 includes procedural safeguards and refers explicitly to the JMD 1982/2016 regarding the age assessment procedure. More specifically, Article 45(4) L 4375/2016 provides that “The competent Receiving Authorities may, when in doubt, refer unaccompanied minors for age determination examinations according to the provisions of the Joint Ministerial Decision 1982/16.2.2016 (O.G. B’ 335). When such a referral for age determination examinations is considered necessary and throughout this procedure, attention shall be given to the respect of gender-related special characteristics and of cultural particularities.”

The provision also sets out guarantees during the procedure:

- (a) A guardian for the child is appointed who shall undertake all necessary action in order to protect the rights and the best interests of the child, throughout the age determination procedure;
- (b) Unaccompanied children are informed prior to the examination of their application and in a language which they understand, of the possibility and the procedures to determine their age, of the methods used therefore, the possible consequences of the results of the above mentioned age determination procedures for the examination of the application for international protection, as well as the consequences of their refusal to undergo this examination;
- (c) Unaccompanied children or their guardians consent to carry out the procedure for the determination of the age of the children concerned;
- (d) The decision to reject an application of an unaccompanied child who refused to undergo this age determination procedure shall not be based solely on that refusal; and
- (e) Until the completion of the age determination procedure, the person who claims to be a minor shall be treated as such.”

The law also states that “the date of birth can be modified after the age determination procedure under Article 45, unless during the interview it appears that the applicant who is registered as an adult is manifestly a minor; in such cases, a decision of the Head of the competent Receiving Authority, following a recommendation by the case-handler, shall suffice.”<sup>348</sup>

Regarding the age assessment procedure *per se*, the JMD 1982/2016 provides that:

- ❖ In case of doubt during the asylum procedure, the competent officer informs the Head of the RAO, who shall issue a decision specifically justifying such doubt in order to refer the applicant to a public health institution or an entity regulated by the Ministry of Health, where a paediatrician and psychologist are employed and a social service operates;<sup>349</sup>
- ❖ The age assessment is conducted with the following successive methods: based on the macroscopic characteristics, such as height, weight, body mass index, voice and hair growth, following a clinical examination from a paediatrician, who will consider body-metric data. The clinical examination must be carried out with due respect of the person's dignity, and take into account deviations and variations relating to cultural and racial elements and living conditions that may affect the individual's development. The paediatrician shall justify his or her final estimation based on the aforementioned examination data;<sup>350</sup>

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<sup>348</sup> Article 43(4) L 4375/2016.

<sup>349</sup> Article 2 JMD 1982/2016.

<sup>350</sup> Article 3 JMD 1982/2016.

- ❖ In case the person's age cannot be adequately determined through the examination of macroscopic features, following certification by the paediatrician, an assessment by the psychologist and the social worker of the structure of the entity will follow in order to evaluate the cognitive, behavioural and psychological development of the individual and a relevant report will be drafted by them. This procedure will take place in a language understood by the applicant, with the assistance of an interpreter, if needed.<sup>351</sup> If no psychologist is employed or there is no functioning social service in the public health institution, this assessment may be conducted by a psychologist and a social worker available from civil society organisations;<sup>352</sup>
- ❖ Wherever a conclusion cannot be reached after the conduct of the above procedure, the following medical examinations will be conducted: left wrist and hand X-rays for the assessment of the skeletal mass, dental examination and panoramic dental X-rays.<sup>353</sup> The opinions and evaluation results are delivered to the Head of the RAO, who issues a relevant act to adopt their conclusions.<sup>354</sup>

The JMD was an anticipated legal instrument, filling the gap of dedicated age assessment procedures within the context of the Asylum Service and limiting the use of medical examinations to a last resort while prioritising alternative means of assessment. Multiple safeguards prescribed in both L 4375/2016 and JMD 1982/2016 regulate the context of the procedure sufficiently, while explicitly providing the possibility of remaining doubts and thus providing the applicant with the benefit of the doubt even after the conclusion of the procedure.

In practice, issues still arise in case the issuance of an age determination act by the RIS has preceded the registration of the asylum application with the Asylum Service. While registration of date of birth by the Hellenic Police Authorities could be corrected by merely stating the correct date before the Asylum Service, the case is not the same when it comes to individuals who have been wrongly assessed regarding their age by the RIS. In these cases, the Asylum Service does not deviate from the findings of the RIS and the relevant age determination act, unless explicit proof is provided. In particular, the original travel document or the original ID issued by the authorities of the country of origin are the sole documents considered by the Asylum Service to provide sufficient proof of age;<sup>355</sup> any other document / proof regarding the age of the applicant is taken into account at the discretion of the Asylum Service. Disappointingly, in several similar cases that GCR is aware of, no further referral for age assessment has been made by the Asylum Service in accordance with JMD 1982/2016. Thus, the application of the abovementioned procedure seems to be severely limited in practice.

GCR is aware of several cases during 2017 where an age assessment was requested by the RAO of **Attica** and **Thessaloniki** before or following registration of an asylum application. In all cases, medical examinations were given priority over demeanour and psychosocial assessment. Hospitals often evoke the limited capacity of particular professionals required for age assessment examinations. At the same time, the lack of an effective **Guardianship** system also hinders the enjoyment of procedural rights guaranteed by JMD 1982/2016.

The number of age assessments conducted within the framework of the asylum procedure in 2016 and the first half 2017 is as follows:

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<sup>351</sup> Article 4 JMD 1982/2016.  
<sup>352</sup> Article 5 JMD 1982/2016.  
<sup>353</sup> Article 6 JMD 1982/2016.  
<sup>354</sup> Article 7 JMD 1982/2016.  
<sup>355</sup> Article 43(4) L 4375/2016.

Age assessments conducted: 2016-2017		
	1 January – 31 December 2016	1 January – 30 June 2017
Age assessments conducted	17	42
Age assessment decisions	19	40

Source: Asylum Service, 21 July 2017. Information for the entire year 2017 is not available.

In sum, according to the Ombudsman:

“[T]he verification of age appears to still be based mainly on the medical assessment carried out at the hospitals, according to a standard method that includes x-ray and dental examination, while the clinical assessment of the anthropometric figures and the psychosocial assessment is either absent or limited. This makes more difficult the further verification of the scientific correctness of the assessment.”<sup>356</sup>

Moreover, the Ombudsman notes serious doubts as to the proper and systematic implementation of the age assessment procedures provided by both ministerial decisions and the implementation of a reliable system.<sup>357</sup>

## 2. Special procedural guarantees

### Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people?

Yes     For certain categories     No

❖ If for certain categories, specify which:

### 2.1. Adequate support during the interview

Applicants in need of special procedural guarantees should be provided with adequate support in order to be in the position to benefit from the rights and comply with the obligations in the framework of the asylum procedure.

National legislation expressively provides that each caseworker conducting an asylum interview shall be “trained in particular as of the special needs of women, children and victims of violence and torture.”<sup>358</sup>

As stated in [Registration](#), specific training for handling vulnerable cases is provided to a number of Asylum Service caseworkers. In June and December 2017, 80 caseworkers of the Asylum Service participated in a training dedicated on vulnerability issues. In 2017, 8 caseworkers of the Asylum Service have been certified by the EASO as trained in the thematic field of “Human Trafficking” and “Interviewing Vulnerable Persons”. A number of meetings with external partners working with vulnerable persons have also taken place in 2017.<sup>359</sup> However, as all Asylum Service caseworkers are conducting interviews with any category of vulnerable persons, such cases are not always qualified staff and there is an effort to ensure that these cases are handle by certified caseworkers.<sup>360</sup>

The law also provides that, when a woman is being interviewed, the interviewer, as well as the

<sup>356</sup> Ombudsman, *Migration flows and refugee protection: Administrative challenges and human rights*, Special Report 2017, 25-25 and 75.

<sup>357</sup> *Ibid*, 25.

<sup>358</sup> Article 52(13)(a) L 4375/2016.

<sup>359</sup> Information provided by the Asylum Service, 15 February 2018.

<sup>360</sup> *Ibid*.

interpreter, should also be female.<sup>361</sup> GCR has observed cases of vulnerable women, namely survivors of torture and rape, that have been interviewed by men.

In practice, GCR is aware of cases where the vulnerability or particular circumstances of the applicant have not been taken into account. Examples include the following:

**Sexual orientation claims:** GCR is aware of two similar cases concerning homosexual applicants from Sierra Leone.<sup>362</sup> In the first case, the applicant claimed to have fled his country due to social exclusion and stigmatisation he was facing. In the second case, the claimant alleged that he had been injured in an attack at a gay bar, in which people were killed. When he attended the funeral of one of the victims, he was arrested, imprisoned and subjected to torture. Both decisions confirmed, by accessing the same sources, that homosexuality in Sierra Leone is criminalised and stigmatised and both decisions found all the allegations of the applicants to be credible. Nonetheless, in the first case, although the fear of stigmatisation was deemed to be well-founded and justified, the claim was rejected on the basis that it was not likely that the applicant's life, physical integrity or freedom would be threatened in case of return. The decision further concluded that the stigmatisation and the social discrimination that will be faced by the applicant do not amount to persecution as defined in the Refugee Convention, despite the fact that the sources examined by the caseworker are mentioning examples which may lead to cumulative persecution such as insecure housing and denial of access to medical care for homosexuals.

In the second case, the decision considered that the applicant, due to the fact that he was released from prison after bribing a guard and did not escape, does not face the danger of being imprisoned again in case of his return, since he is not a fugitive. Even if his fear of imprisonment were to be materialised, "the arrest and imprisonment of the applicant would not be arbitrary so as to constitute persecution". Moreover, although the decision accepts that homosexuals in Sierra Leone are stigmatised, discriminated against and are not adequately protected by the authorities, the decision rejects the applicant's claim considering that "it cannot be surmised that the attacks homosexuals are facing in the applicant's country of origin are so many so as to conclude that there is a reasonable possibility that the applicant will again face an attack... by the citizens of his country, nor is there a reasonable possibility that the applicant will be imprisoned again and mistreated by the authorities of his country as a homosexual, since, according to the research of the Asylum Service, no mentions of similar incidents were found." The decision failed to evaluate the applicant's previous persecution, which it accepted to be true, and also did not take into account the medical documents submitted by the applicant related to his subjection to torture. Lastly, the decision did not consider if multiple discrimination of the applicant in case his return to his country of origin on the ground of his homosexuality amounted to cumulative persecution.

**Best interests of the child evaluation in asylum claims:** GCR has observed that some decisions examining claims of unaccompanied children do not take into consideration the best interests of the child principle. For example, this was the case for an unaccompanied child from Pakistan who claimed that he had to work since the age of 9 in extreme conditions and that he fled his country of origin as he was facing extreme hardship and violations of his rights as a child and as a human being. Although the first instance decision accepted the past persecution of the child as a victim of forced labour, and despite the age of the applicant and the fear of re-victimisation in case of return, it failed to conclude that these could amount to persecution.<sup>363</sup>

Furthermore, as stated by the Network for the Rights of Children on the Move, in a number of cases the assessment of applications by unaccompanied children is determined by negative preconceptions

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<sup>361</sup> Article 52(6) L 4375/2016.

<sup>362</sup> Decisions on file with the author.

<sup>363</sup> Decision on file with the author.

regarding the well-foundedness of the claim linked to the child's country of origin.<sup>364</sup> In this respect, the first instance recognition rate for unaccompanied children (27.5%), significantly lower than the overall rate (46%), is also a matter of concern.

**Psychological condition:** In a case concerning an Afghan applicant who stated he was facing psychological problems and was under medical treatment, his health condition or the effects it had on the credibility of his statements were not evaluated at any point in the first instance decision.<sup>365</sup> As regards an asylum seeker from the Democratic Republic of Congo, who alleged that he had been abducted, arbitrarily detained for three days and suffered repeated beatings, although the decision found his statements credible, he was rejected on the basis that following release he remained in the country for two more months before fleeing, without facing problems from the authorities. The decision failed to take into account the fact that the applicant, following detention and the violence suffered, was hospitalised for a period of 1.5 months. His psychological condition was also not evaluated, although a medical certificate referring to his psychological problems and his medical treatment had been submitted to the Asylum Service.<sup>366</sup>

## 2.2. Exemption from special procedures

National legislation expressly foresees that applicants in need of special procedural guarantees shall always be examined under the regular procedure.<sup>367</sup>

Newly arrived applicants who fall within the family provisions of the Dublin Regulation or who are considered vulnerable, according to the definition in Article 14(8) L 4375 (see [Identification](#)) are exempted from the [Fast-Track Border Procedure](#) and their claims are considered admissible.<sup>368</sup> In 2017, 15,788 applications were exempted from the fast-track border and channelled into the regular procedure for reasons of vulnerability. These include 993 applications by unaccompanied children, while the specific vulnerabilities presented by the rest of the cases are not available.<sup>369</sup>

On 8 December 2016 a Joint Action Plan of the EU Coordinator on the implementation of certain provisions of the EU-Turkey statement recommended Greek authorities to amend the legal basis of this exemption in order to channel Dublin family reunification cases and vulnerable groups under the fast-track border procedure, with a view to subjecting these cases to the admissibility procedure and to their possible return to Turkey.<sup>370</sup> Pressure on the Greek authorities to abolish the existing exemptions from the fast-track border procedure and to "reduce the number of asylum seekers identified as vulnerable" continued to be reported in 2017.<sup>371</sup> However, a report published by Médecins Sans Frontières in July 2017 stressed that "far from being over-identified, vulnerable people are falling through the cracks and are not being adequately identified and cared for."<sup>372</sup>

According to a European Commission report published in November 2017, the adoption of a provision lifting the exemption of asylum seekers falling within the Dublin Regulation family provisions from the

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<sup>364</sup> Network for the Rights of Children on the Move, *Annual Report: January 2017 – January 2018*, available at: <http://bit.ly/2p9hmNu>, 2.

<sup>365</sup> Decision on file with the author.

<sup>366</sup> Decision on file with the author.

<sup>367</sup> Article 50(2) L 4375/2016.

<sup>368</sup> Article 60(4)(f) L 4375/2016.

<sup>369</sup> Information provided by the Asylum Service, 15 February 2018.

<sup>370</sup> European Commission, *Joint Action Plan of the EU Coordinator on the implementation of certain provisions of the EU-Turkey Statement*, Annex 1 to COM(2016) 792, 8 December 2016, paras 2 and 3.

<sup>371</sup> Human Rights Watch, 'EU/Greece: Pressure to minimise numbers of migrants identified as vulnerable', 1 June 2017, available at: <http://bit.ly/2qD2fQb>; AIDA, *The concept of vulnerability in European asylum procedures*, September 2017, 17.

<sup>372</sup> MSF, *A dramatic deterioration for asylum seekers on Lesbos*, July 2017, 3.



fast-track border procedures is pending before the Greek Parliament,<sup>373</sup> even though no relevant legislative proposal has been published to date. In the view of the Asylum Service, on the other hand, vulnerable groups such remain exempt from the procedure in order to ensure sufficient procedural guarantees, and a new medical vulnerability template should be shortly implemented “in the interests of standardised and objective vulnerability detection”.<sup>374</sup> Furthermore, the General Commission of Regular Administrative Courts, the branch of senior judges responsible for monitoring and assisting the operation of the Administrative Courts and to formulate opinions of points of administrative law of general interests, has proposed a more rigid definition of vulnerable groups, which would remove persons suffering from post-traumatic stress disorder (PTSD) from the list of vulnerable persons and would no longer guarantee them an exemption from the fast-track border procedure.<sup>375</sup>

### 2.3. Prioritisation

Both definitions (“vulnerable group” and “applicant in need of special procedural guarantees”) are used in relation to other procedural guarantees such as the examination of applications by way of priority.<sup>376</sup> For example Article 51(6) L 4375/2016 provides that applications lodged by applicants belonging to vulnerable groups within the meaning of Article 14(8) L 4375/2016 or are in need of special procedural guarantees “may [be] register[ed] and examine[d] by priority”.

The number of applications by vulnerable persons which were examined by priority is not available. However, as stated in [Regular Procedure: Personal Interview](#), GCR is aware of applications by persons officially recognised as vulnerable whose interview has been scheduled over one year after registration.

### 3. Use of medical reports

#### Indicators: Use of Medical Reports

1. Does the law provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?  
 Yes       In some cases       No
2. Are medical reports taken into account when assessing the credibility of the applicant's statements?  
 Yes       No

Upon condition that the applicant consents to it, the law provides for the possibility for the competent authorities to refer him or her for a medical and/or psychosocial diagnosis where there are signs or claims, which might indicate past persecution or serious harm. These examinations shall be free of charge and shall be conducted by specialised scientific personnel of the respective specialisation and their results shall be submitted to the competent authorities as soon as possible. Otherwise, the applicants concerned must be informed that they may be subjected to such examinations at their own initiative and expenses. Any results and reports of such examinations must be taken into consideration by the asylum authorities.<sup>377</sup>

Few such cases of best practice, where Asylum Service officers referred women applicants who were sexual and gender-based violence (SGBV) victims, were recorded by GCR in 2017. Furthermore, in a

<sup>373</sup> European Commission, *Progress report on the European Agenda on Migration: Joint Action Plan on the implementation of the EU-Turkey statement*, COM(2017) 669, 15 November 2017.

<sup>374</sup> *Ibid.*

<sup>375</sup> General Commission of Regular Administrative Courts, *Προτάσεις για την επιτάχυνση των διαδικασιών στις υποθέσεις αιτημάτων χορήγησης διεθνούς προστασίας*, No 3089, 14 November 2017, available in Greek at: <http://bit.ly/2E6CFst>. See also ECRE, ‘Greek judges recommend legal restrictions to accelerate procedure on the islands’, 24 November 2017, available at: <http://bit.ly/2hRbIC3>.

<sup>376</sup> Article 51(6) L 4375/2016.

<sup>377</sup> Article 53 L 4375/2016.



number of cases examined during 2017 medical reports indicating that the applicant had been a victim of torture have not been taken into consideration in the first instance procedure.<sup>378</sup>

A recent second instance decision issued by the Appeals Authority on the claim of a torture survivor from the Democratic Republic of Congo, which ruled that an asylum seeker that has been subjected to torture is not obliged to present an expert report to sustain his or her claim.<sup>379</sup> On the contrary, the decision stated that it is the asylum authorities' obligation to investigate the claim, especially when there are serious indications that the applicant has been subjected to torture. The above reasoning was included in the decision, although the applicant had presented medical reports sustaining the claim that he had been subjected to torture, which the Independent Appeals Committee took into consideration when granting him international protection. Moreover, a second instance decision issued by the Backlog Appeals Committee granted international protection to a survivor of torture who suffered from severe physical and psychiatric disorders, based exclusively on medical and social reports, accepting that the person in concern was not in position to participate in the interview, due to his disabilities.

#### 4. Legal representation of unaccompanied children

##### Indicators: Unaccompanied Children

1. Does the law provide for the appointment of a representative to all unaccompanied children?

Yes

No

As provided by Greek legislation, the "competent authorities shall take the appropriate measures to ensure the minor's necessary representation. For this purpose, they shall inform the Public Prosecutor for Minors or, in the absence thereof, the territorially competent First Instance Public Prosecutor, who shall act as a provisional guardian and shall take the necessary steps in view of the appointment of a guardian for the minor."<sup>380</sup>

In practice, a tremendous lack of any effective system of guardianship persists. As mentioned by the Ombudsman, "the large number of children of unaccompanied minors renders impossible the exercise of the duties of the temporary guardian by the local Public Prosecutors... The minor's representation as well as the management of their daily problems, are impossible... Significant rights become a dead letter without the existence of a guardian. The absence of a guardianship system in Greece and the need to review relevant domestic law has been a pending discussion for years."<sup>381</sup>

In this regard, the United Nations Special Rapporteur on the human rights of migrants recommended to the Greek authorities to "address as a matter of priority the issue of unaccompanied minors; [to] develop a substantial and effective guardianship system, ensure guardians underwent the necessary professional training, have the experience, expertise and competence (such as social workers), and are appropriately supported with the necessary resources."<sup>382</sup>

In a case of September 2017 concerning an unaccompanied child from Bangladesh supported by GCR, the 1<sup>st</sup> Independent Appeals Committee annulled the first instance decision due to non-observance of the procedural guarantees provided by law, particularly the obligation of the Public Prosecutor for minors to be notified in order to act as temporary guardian for the unaccompanied child.<sup>383</sup> In addition,

<sup>378</sup> See also Italian Council for Refugees et al., *Time for Needs: Listening, healing, protection*, October 2017, available at: <http://bit.ly/2y3DPCQ>, 57.

<sup>379</sup> Decision on file with the author.

<sup>380</sup> Article 19 PD 220/2007.

<sup>381</sup> Ombudsman, *Migration flows and refugee protection: Administrative challenges and human rights*, Special Report 2017, 28-29 and 75.

<sup>382</sup> Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants on his mission to Greece*, A/HRC/35/25/Add.2, 24 April 2017.

<sup>383</sup> Decision on file with the author. In this case, instead of the Public Prosecutor, a non-competent authority, the National Centre for Social Solidarity, had been notified for the appointment of a guardian.

the Administrative Court of Appeal of Athens has annulled a second instance decision rejecting the application of an unaccompanied child from Morocco, *inter alia* on the basis that procedural guarantees for unaccompanied children had not been respected.<sup>384</sup>

The Asylum Service received 2,275 applications from unaccompanied children in 2017, of which 2,147 from boys and 128 from girls.<sup>385</sup> As stated in [Special Procedural Guarantees](#), unaccompanied children are subject to a much lower recognition rate (27.5%) than the overall asylum seeker population (46%). This may also indicate a significant number of unaccompanied children remaining in legal limbo, deprived of the enjoyment of basic rights.

## E. Subsequent applications

### Indicators: Subsequent Applications

1. Does the law provide for a specific procedure for subsequent applications?  Yes  No
2. Is a removal order suspended during the examination of a first subsequent application?
  - ❖ At first instance  Yes  No
  - ❖ At the appeal stage  Yes  No
3. Is a removal order suspended during the examination of a second, third, subsequent application?
  - ❖ At first instance  Yes  No
  - ❖ At the appeal stage  Yes  No

The law sets out no time limit for lodging a subsequent application, as the very purpose of Article 59 L 4375/2016 is to allow for another examination of the case whenever new elements arise.

A subsequent application can also be lodged by a member of a family who had previously lodged an application. In this case the preliminary examination regards the eventual existence of evidence that justify the submission of a separate application by the depending person.<sup>386</sup>

1,708 subsequent asylum applications were submitted to the Asylum Service in 2017:

Subsequent applicants: 2017	
Country of origin	2017
Pakistan	577
Egypt	160
Bangladesh	128
Georgia	124
Albania	106
Others	613
<b>Total</b>	<b>1,708</b>

Source: Asylum Service, 15 February 2018.

The registration of a subsequent application is suspended for as long as the 60-day deadline for the submission of an application for the annulment of the second instance negative decision before the

<sup>384</sup> The case has been supported by NGO Arsis, see Arsis, 'Ακύρωση απόφασης της Αρχής Προσφυγών που απέρριπτε αίτημα ασύλου ασυνόδευτου ανηλίκου', 3 January 2018, available in Greek at: <http://bit.ly/2GpCAPB>.

<sup>385</sup> Information provided by the Asylum Service, 15 February 2018.

<sup>386</sup> Article 59(5) L 4375/2016.

Administrative Court of Appeal is still pending, unless the applicant proceeds to waive his or her right to legal remedies. The applicant can only waive this right in person or through a proxy before the competent Administrative Court of Appeal. This procedure poses serious obstacles to applicants subject to the [Fast-Track Border Procedure](#) who intend to submit a subsequent application.

This is in particular the case for applicants whose application has been examined without having being processed by the RIS due to the shortcomings in the [Identification](#) procedure and their vulnerability having been identified, or cases regarding vulnerabilities appeared or identified on a later stage. Cases where vulnerability has been identified by the RIS or medical actors operating on the islands, e.g. public hospitals, and relevant certificates were issued after the second instance examination or even after the issuance of the second instance decision have been encountered by GCR. Therefore, the identification of vulnerability is a “new, substantial element” as prescribed by law.

However, according to the practice followed, applicants whose application has been rejected within the framework of the fast-track border procedure are immediately arrested and detained upon receiving of a second instance negative decision in order to be swiftly readmitted to Turkey. As they remain detained there is no way for them to present themselves before the competent Administrative Court, located in **Piraeus**, Attica region, in order to waive the right to submit an onward appeal and respectively to lodge a subsequent application. It is also extremely difficult to locate a notary on the island willing to proceed to the detention facility and prepare a proxy form that will be sent to a lawyer on the mainland who will waive the right on behalf of the applicant. Even if this is the case, the fact that readmission procedures may be completed within a number of days from notification of the second instance decision means that the time required for this procedure is not usually available and the right to submit a subsequent application is hindered for applicants under the fast-track border procedure.

### **Preliminary examination procedure**

According to L 4375/2016, when a subsequent application is lodged, the relevant authorities examine the application in conjunction with the information provided in previous applications.<sup>387</sup>

Subsequent applications are subject to a preliminary examination, during which the authorities examine whether new substantial elements have arisen or are submitted by the applicant. During that preliminary stage, according to the law all information is provided in writing by the applicant,<sup>388</sup> however in practice subsequent applications have been registered with all information provided orally.

If the preliminary examination concludes on the existence of new elements “which affect the assessment of the application for international protection”, the subsequent application is considered admissible and examined on the merits. The applicant is issued a new “asylum seeker’s card” in that case. If no such elements are identified, the subsequent application is deemed inadmissible.<sup>389</sup>

Until a final decision is taken on the preliminary examination, all pending measures of deportation or removal if applicants who have lodged a subsequent asylum application are suspended.<sup>390</sup>

Any new submission of an identical subsequent application shall be filed, in accordance with the provisions of Article 4 of the Code of Administrative Procedure.<sup>391</sup>

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<sup>387</sup> Article 59(1) L 4375/2016.

<sup>388</sup> Article 59(2) L 4375/2016.

<sup>389</sup> Article 59(4) L 4375/2016.

<sup>390</sup> Article 59(3) L 4375/2016.

<sup>391</sup> Article 59(7) L 4375/2016.

Until the completion of this preliminary procedure, applicants are not provided with proper documentation and have no access to the rights attached to asylum seeker status or protection. The asylum seeker's card is provided after a positive decision on admissibility.

A total of 460 subsequent applications were considered admissible and referred to be examined on the merits, while 915 subsequent applications were dismissed as inadmissible in 2017.<sup>392</sup>

## F. The safe country concepts

### Indicators: Safe Country Concepts

- |  |   |  |
|--|---|--|
| 1. Does national legislation allow for the use of "safe country of origin" concept?  | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Is there a national list of safe countries of origin?                              | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| ❖ Is the safe country of origin concept used in practice?                            | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| 2. Does national legislation allow for the use of "safe third country" concept?      | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Is the safe third country concept used in practice?                                | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| 3. Does national legislation allow for the use of "first country of asylum" concept? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |

Following the EU-Turkey statement of 18 March 2016, the provisions concerning the "first country of asylum" and the "safe third country" concepts were applied for the first time in Greece vis-à-vis Turkey. Serious concerns about the compatibility of the EU-Turkey statement with international and European law, and more precisely the application of the "safe third country" concept, have been raised since the publication of the statement.<sup>393</sup>

On 28 February 2017, the General Court of the European Union gave an order with regard to an action for annulment brought by two Pakistani nationals and one Afghan national against the EU-Turkey statement. The order stated that "the EU-Turkey statement, as published by means of Press Release No 144/16, cannot be regarded as a measure adopted by the European Council, or, moreover, by any other institution, body, office or agency of the European Union, or as revealing the existence of such a measure that corresponds to the contested measure."<sup>394</sup> Therefore "the Court does not have jurisdiction to rule on the lawfulness of an international agreement concluded by the Member States."<sup>395</sup>

The United Nations Special Rapporteur on the human rights of migrants expressed his concern that the statement "constitutes a political 'deal' without mandatory value in international law. Its legal basis is undermined and it cannot be legally challenged in courts. Despite its effects, the... Court... has determined it to be non-reviewable."<sup>396</sup> Likewise, Amnesty International, commenting on the ruling, stated that "EU leaders negotiate a deal at an EU summit, publicize it as an EU deal and use EU resources to implement it, but then claim it has nothing to do with the EU in order to avoid judicial

<sup>392</sup> Information provided by the Asylum Service, 15 February 2018.

<sup>393</sup> See e.g. NCHR, *Έκθεση για τη συμφωνία ΕΕ-Τουρκίας της 18ης Μαρτίου 2016 για το προσφυγικό/μεταναστευτικό ζήτημα υπό το πρίσμα του Ν. 4375/2016*, 25 April 2016, available in Greek at: <http://bit.ly/2mxAncu>; Parliamentary Assembly of the Council of Europe (PACE), Resolution 2109 (2016) "The situation of refugees and migrants under the EU-Turkey Agreement of 18 March 2016", available at: <http://bit.ly/2flSxIY>.

<sup>394</sup> General Court of the European Union, Cases T-192/16, T-193/16 and T-257/16 *NF, NG and NM v. European Council*, Order of 28 February 2017, press release available at: <http://bit.ly/2lWZPrr>.

<sup>395</sup> *Ibid.*

<sup>396</sup> United Nations Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants on his mission to Greece*, A/HRC/35/25/Add.2, 24 April 2017, available at: <http://bit.ly/2rHF7kl>, para 31.

scrutiny.”<sup>397</sup> As highlighted, by “concluding the EU-Turkey Refugee Deal outside the EU legal framework and decision-making process, the member states purposely undermined EU *acquis* consistency.”<sup>398</sup>

The orders of the Court were appealed before the CJEU in April 2017. Decisions were still pending at the end of the year.<sup>399</sup>

## 1. Safe third country

The “safe third country” concept is a ground for inadmissibility (see [Admissibility Procedure](#)).

According to Article 56(1) L 4375/2016, a country shall be considered as a “safe third country” for a specific applicant when all the following criteria are fulfilled:

- (a) The applicant's life and liberty are not threatened for reasons of race, religion, nationality, membership of a particular social group or political opinion;
- (b) This country respects the principle of *non-refoulement*, in accordance with the Refugee Convention’
- (c) The applicant faces no risk of suffering serious harm according to Article 15 PD 141/2013, transposing the recast Qualification Directive;
- (d) The country prohibits the removal of an applicant to a country where he or she risks to be subject to torture or cruel, inhuman or degrading treatment or punishment, as defined in international law;
- (e) The possibility to apply for refugee status exists and, if the applicant is recognised as a refugee, to receive protection in accordance with the Refugee Convention; and
- (f) The applicant has a connection with that country, under which it would be reasonable for the applicant to move to it.

There is no list of safe third countries in Greece. The concept is only applied in the context of the [Fast-Track Border Procedure](#) under Article 60(4) L 4375/2016 on the islands for those arrived after 20 March 2016 and subject to the EU-Turkey statement, and in particular vis-à-vis nationalities with a recognition rate over 25%, thereby including Syrians, Afghans and Iraqis.

### 1.1. Safety criteria

#### 1.1.1. Applications lodged by Syrian nationals

In 2017, the Asylum Service issued 1,276 decisions to Syrian nationals on the basis of the safe third country concept:

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<sup>397</sup> Amnesty International, ‘EU: Court decision exposes deliberate attempt to sidestep accountability’, 1 March 2017, available at: <http://bit.ly/2nqR9re>.

<sup>398</sup> Sergio Carrera, Leonhard den Hertog and Marco Stefan, ‘It wasn’t me! The Luxembourg Court Orders on the EU-Turkey Refugee Deal’ (2017) Centre for European Policy Studies, Policy Insights No 2017-15, available at: <http://bit.ly/2DTog2K>, 8.

<sup>399</sup> CJEU, Cases C-208/17 P, C-209/17 P and C-210/17 P *NF, NG and NM v. European Council*.

First instance decisions to Syrians based on the “safe third country” concept: 2017		
Decision	Number	Percentage
Inadmissible	912	71.4%
Admissible	364	28.6%
Total	1,276	100%

Source: Asylum Service, 15 February 2018.

As a rule, first instance decisions dismissing the applications of Syrian nationals as inadmissible on the basis that Turkey is a safe third country in the [Fast-Track Border Procedure](#) are based on a pre-defined template provided to Regional Asylum Offices or Asylum Units on the islands, and are identical except for the applicants’ personal details and a few lines mentioning their statements.<sup>400</sup>

As highlighted by the United Nations Special Rapporteur on the human rights of migrants, “admissibility decisions issued are consistently short, qualify Turkey as a safe third country and reject the application as inadmissible: this makes them practically unreviewable.”<sup>401</sup>

To the knowledge of GCR, the same template decision issued in mid-2016 was used as of the end of 2017 to conclude that Turkey is a safe third country for Syrian asylum seekers. Accordingly, negative first instance decisions are not only identical but also outdated insofar as they do not take into account recent developments. For example, an amendment to the Turkish Law on Foreigners and Integrational Protection in October 2016 lays down a derogation from the principle of *non-refoulement* for cases including threat to public order, safety and public health. In these cases, appeals against deportations do not benefit from suspensive effect. As a result of this reform, several deportation cases have been initiated against temporary protection beneficiaries in Turkey.<sup>402</sup>

For an indicative example of a first instance inadmissibility decision issued in November 2017 against a Syrian national, see [Annex II](#).

In 2016, the overwhelming majority of second instance decisions issued by the [Backlog Appeals Committees](#) rebutted the safety presumption.<sup>403</sup> However, following reported pressure by the EU with regard to the implementation of the EU-Turkey statement,<sup>404</sup> the composition of the Appeals Committees was – again – amended two months after the publication of L 4375/2016.

In 2017, contrary to the outcome of second instance decisions issued by the Backlog Appeals Committees in 2016, 98.2% of the decisions issued by the new Independent Appeals Committees have upheld the inadmissibility decisions on the basis of the safe third country concept. The Independent Appeals Committees have issued 401 decisions on admissibility in 2017:

<sup>400</sup> ECRE et al., *The implementation of the hotspots in Italy and Greece*, December 2016, 38. On **Lesvos**, see GCR, *GCR Mission to Lesvos – November 2016*, available at: <http://bit.ly/2kbN7F0>, 20; On **Samos**, see GCR, *GCR Mission to Samos – June 2016*, available at: <http://bit.ly/2kCHMDm>, 20 On **Leros** and **Kos**, see GCR, *GCR Mission to Leros and Kos – May to November 2016*, 32.

<sup>401</sup> United Nations Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants on his mission to Greece*, A/HRC/35/25/Add.2, 24 April 2017, para 81.

<sup>402</sup> AIDA, *Country Report Turkey, 2017 Update*, March 2018, available at: <https://bit.ly/211S9fS>.

<sup>403</sup> The United Nations Special Rapporteur on the human rights of migrants commended their independence against “enormous pressure from the European Commission”: *Report on the visit to Greece*, 24 April 2017, para 85.

<sup>404</sup> New Europe, ‘EU Council: Why Greece should consider Turkey safe for Syrian refugees’, 9 June 2016, available at: <http://bit.ly/2lWDYOa>; Keep Talking Greece, ‘EU presses Greece to change asylum appeal committees that consider “Turkey is not a safe country”’, 11 June 2016, available at: <http://bit.ly/2kNWR5D>.



Second instance decisions to Syrians based on the “safe third country” concept: 2017		
Decision	Number	Percentage
Dismissal of appeal	394	98.3%
Grant of refugee status	7	1.7%
Total	401	100%

Source: Appeals Authority, 6 February 2018.

Moreover, out of a total of 962 appeals lodged by Syrian nationals against inadmissibility decisions in 2017, 446 appeals had been examined by the Independent Appeals Committees and decisions were pending publication at the end of 2017.<sup>405</sup>

On 22 September 2017, the Council of State delivered two rulings concerning an application for annulment brought by two Syrian nationals.<sup>406</sup> The cases had been referred to the plenary session of the court by earlier decisions in 2017 “due to the importance of the issue concerned”.<sup>407</sup> The Council of State agreed with the Appeals Committee that the applicants’ claims were inadmissible based on the “safe third country” concept. It also refused by narrow majority (13:12) to refer a preliminary question to the CJEU on the interpretation of Article 38 of the recast Asylum Procedures Directive,<sup>408</sup> despite the existence of reasonable doubts on the meaning of certain terms of the Directive, as further detailed below.<sup>409</sup>

It is worth noting that the majority of Independent Appeals Committees decisions issued after the Council of State rulings have been appealed before the competent Administrative Court of Appeals. GCR is aware of a number of cases where an interim order has been granted and thus the application of the second instance decisions rejecting the application as inadmissible has been temporary suspended.

At the same time, an application was lodged before the ECtHR on 9 September 2016 concerning a Syrian facing return to Turkey on the basis of an inadmissibility decision. The case has been prioritised by the Court under Rule 41 of the Rules of the Court, to assess whether the applicant would face degrading treatment in the event of return to Turkey, particularly in relation to his ethnic origin, religion and state of health.<sup>410</sup>

The application of the safe third country concept by the Asylum Service and Appeals Committees, as well as the interpretation of the concept by the Council of State, raise particular concerns with regard to the following issues:

### Sources consulted

As regards sources used to substantiate the safe third country concept vis-à-vis Syrians, first instance decisions declaring asylum applications inadmissible mention a number of sources, including: the AIDA

<sup>405</sup> Information provided by the Appeals Authority, 6 February 2018.

<sup>406</sup> Council of State, Decisions 2347/2017 and 2348/2017 (Plenary Session), 22 September 2017. For a summary of key points, see AIDA, ‘Greece: The ruling of the Council of State on the asylum procedure post EU-Turkey deal’, 4 October 2017, available at: <http://bit.ly/2y2tlND>.

<sup>407</sup> Council of State, Decisions 445/2017 and 447/2017 (Fourth Section), 15 February 2017.

<sup>408</sup> Council of State, Decision 2347/2017, 22 September 2017, para 63.

<sup>409</sup> For a critique of the ruling, see NCHR, *Report on the condition of the reception and asylum system in Greece*, 22 December 2017, available at: <http://bit.ly/2nxf1P0>.

<sup>410</sup> ECtHR, *J.B. v. Greece*, Application No 54796/16, Communicated on 18 May 2017. See also AIRE Centre, ECRE, ICJ and Dutch Council for Refugees, *Third party intervention in J.B. v. Greece*, 4 October 2017, available at: <http://bit.ly/2qSRxoU>; Gisti and International Federation for Human Rights (FIDH), *Third part intervention in J.B. v. Greece*, 20 September 2017, available at: <http://bit.ly/2DFZ0h8>. The case is supported by Refugee Support Aegean: <https://bit.ly/2sdZC6O>.



Country Report Turkey of December 2015, the UNHCR Regional Refugee and Migrant Response Plan for Europe of January 2016, relevant correspondence between the Turkish authorities and the European Commission, correspondence between Greek authorities and the European Commission, as well as correspondence between UNHCR and the Greek Asylum Service.

However, as illustrated in [Annex II](#), decisions are mainly based on: (i) Turkish legislation, without referring to the 2016 amendment derogating from *non-refoulement*; (ii) correspondence between the Commission and Greek authorities; and (iii) correspondence between the Commission and Turkish authorities.

The correspondence expressly mentioned in first instance decisions includes:<sup>411</sup>

- ❖ Letter of 12 April 2016 by the Turkish Ambassador to the EU to the European Commission Director-General for Migration and Home Affairs, stating that “Each Syrian national returned to Turkey will be granted such [temporary protection] status”;
- ❖ Letter of 24 April 2016 by the Turkish Ambassador to the EU to the European Commission Director-General for Migration and Home Affairs, stating that “Turkey confirms that non-Syrians who seek international protection having irregularly crossed into the Aegean islands via Turkey as of 20 March 2016 and being taken back to Turkey as of 4 April 2016 will be able to lodge an application for international protection in accordance with the Law on Foreigners and International Protection and its secondary legislation”;
- ❖ Letter of 5 May 2016 by the European Commission Director-General for Migration and Home Affairs to the Greek Secretary General for Migration, outlining the Commission’s view that Turkey qualifies as a “safe third country” and “first country of asylum”. The letter includes a controversial interpretation of EU law and compliance of Turkish law with these requirements, as well as unverified statements, mentioning *inter alia* that:
  - “transit through Turkey suffices for a sufficient connection to be established”, in clear contrast with UNHCR’s view according to which “transit alone is not a ‘sufficient’ connection or meaningful link”;<sup>412</sup>
  - “Art. 38 of the Asylum Procedures Directive does not require ratification of the Geneva Convention without geographical limitations” while “UNHCR understands this provision to mean that access to refugee status and to the rights of the 1951 Convention must be ensured in law, including ratification of the 1951 Convention and/or the 1967 Protocol, and in practice”;<sup>413</sup>
  - “on 29 April 2016, Turkey and UNHCR concluded Standard Operating Procedure on ensuring access to removal centres”.<sup>414</sup>
- ❖ Letter of 29 July 2016 by the European Commissioner for Migration and Home Affairs to the Greek Minister for Migration Policy, stating that “the Commission considers that, notwithstanding recent developments in Turkey, the Turkish legal framework combined with the assurances that Turkey provided... still can be consider as sufficient protection or protection equivalent to that of the Geneva Convention”.

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<sup>411</sup> These documents are available at: <http://bit.ly/2kCPI19>. Decisions of the Asylum Service and the Appeals Committees also make reference to unpublished letters by the UNHCR Representation in Greece concerning the situation of Syrians in Turkey.

<sup>412</sup> UNHCR, *Legal considerations on the return of asylum-seekers and refugees from Greece to Turkey as part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the safe third country and first country of asylum concept*, 23 March 2016, available at: <http://bit.ly/1Mrxmnc>, 6.

<sup>413</sup> *Ibid.*

<sup>414</sup> A letter by UNHCR to the Asylum Service of 14 December 2016 mentioned that “UNHCR does not benefit at this stage from unhindered and predictable access to pre-removal centres in Turkey and Düziçi reception centre.”

These documents mainly refer to the provisions of the Turkish law, prior to its 2016 amendment, and to vague and general assurances given by the Turkish authorities in the context of the EU-Turkey statement. Assessing the safety of Turkey on such basis disregards the point raised by the constant jurisprudence of the ECtHR, namely that “the existence of domestic laws and accession to international treaties guaranteeing respect for fundamental rights in principle are not in themselves sufficient to ensure adequate protection.”<sup>415</sup> Even where assurances have been offered, “[t]here is an obligation to examine whether assurances provide, in their practical application, a sufficient guarantee.”<sup>416</sup>

Moreover, the content of the most recent letter addressed to the Asylum Service by the UNHCR Representation in Greece on 14 December 2016, entitled “Update on UNHCR letters of 4<sup>th</sup> May and 9<sup>th</sup> June 2016”, does not seem to be taken into account in any of the first instance inadmissibility decisions. In this letter UNHCR mentions *inter alia* that:

“First, UNHCR does not benefit at this stage from unhindered and predictable access to pre-removals centres in Turkey and Düzici reception centre... Second, UNHCR needs to seek authorization to visit the centre at least five working days in advance which in practice, does not allow for timely monitoring of some individual cases Third, UNHCR does not systematically receive information on the legal status and location of individuals who have readmitted from Greece...

Out of the 82 Syrian nationals readmitted from Greece, UNHCR is in a position to confirm, based on direct contacts, that 12 of them (re)acquired temporary protection. Despite its best efforts, UNHCR has not been able to contact the majority of the others. Thirteen other individuals contacted are still in the process of completing the procedure or waiting for the reactivation of their status. UNHCR is not in a position to assess the average length of this procedure”.<sup>417</sup>

To a great extent, second instance decisions echo the sources cited by the Asylum Service decisions. More specifically, they state that “the letters of the Turkish authorities, the content of which is confirmed by the... letters [of the European Commission and UNHCR] and other available sources (websites of media outlets), constitute ‘diplomatic assurances’ of particular evidentiary value.”<sup>418</sup> Setting aside the question whether the letters of the Turkish authorities dated 2016 can be considered as “diplomatic assurances”, it should be noted that the Appeals Committees have not examined these “assurances” in line with the requirements set by the ECtHR, including the need for assurances to be specific, subject to a monitoring mechanism, and a sufficient guarantee in their practical application. This failure cannot be remedied by a reference to other correspondence e.g. the aforementioned letters of the European Commission and UNHCR. Nevertheless, this approach has been approved by the Council of State as adequately reasoned.<sup>419</sup>

As mentioned above, in 2017 a number of first instance decisions issued for Syrian applicants declared the application admissible. As far as GCR is aware, such decisions include: the case of applicants of

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<sup>415</sup> ECtHR, *Saadi v. United Kingdom*, Application No 13229/03, Judgment of 29 January 2008, para 147.

<sup>416</sup> ECtHR, *Othman v. United Kingdom*, Application No 8139/09, Judgment of 17 January 2012, para 189. See also AIRE Centre et al., *Third party intervention in J.B. v. Greece*, 4 October 2017, 3-5.

<sup>417</sup> This is also the content of a letter sent by the UNHCR Representation in Greece on 23 December 2016, available at: <http://bit.ly/2jjDWIO>.

<sup>418</sup> Council of State, Decision 2347/2017, 22 September 2017, para 45, citing the Appeals Committee decision.

<sup>419</sup> Council of State, Decision 2347/2017, 22 September 2017, paras 45-46. Note, however, the dissenting judgment in para 60, stating that due to the situation of Turkey after the failed coup of 15 July 2016, “The assurances of the diplomatic authorities of this country, forming part of the hierarchy of said regime, have no credibility. This is valid when both the Directive and Greek law do not refer to any protection status, but require the highest possible protection status (‘in accordance with the Geneva Convention’) to be guaranteed...”

Palestinian origin with a former habitual residence in Syria whose application has been declared admissible as temporary protection status is accessible only to stateless person arriving in Turkey directly from Syria; the case of single women whose application has been considered admissible on the basis that the rights of a single refugee woman are not effectively protected in practise as it comes by a number of credible reports; and the case of Syrian applicants of Kurdish origin.<sup>420</sup> Among others, sources mentioned for the case of persons of Palestinian origin with a former habitual residence in Syria include the text of the Turkish law and the above correspondence of the Turkish authorities. For the other cases, apart from sources mentioned above, sources consulted also include a number of reports issued by state bodies, international organisations and NGOs. However, it should be mentioned that this line of reasoning is not consistently applied and that contradictions between the reasoning and the outcome of similar cases occur. Thus, for the same reporting period, GCR is aware of substantially similar cases (applicant of Palestinian origin with former habitual residence in Syria, Syrian single woman, Syrian of Kurdish origin) being rejected as inadmissible based on the safe third country concept.

In addition, as regards the 7 Appeals Committee decisions declaring the application inadmissible and granting refugee status on appeal, as far as GCR is aware, these include cases where the connection criterion has been considered not to be fulfilled and where the appellant was a victim of torture who had not been identified in the first instance procedure.

### Assessment of the criteria in practice

More precisely, the assessment of the safety criteria under Article 56(1) L 4375/2016 in first instance decisions on inadmissibility (see [Annex II](#)) is made as follows:

- *Article 56(1)(a)-(c) L 4375/2016 / Article 38(1)(a)-(b) recast Asylum Procedures Directive:* Decisions merely mention that the applicant's life and liberty are not threatened in Turkey on account of race, religion, nationality, membership of a particular social group or political opinion" without any further assessment or justification;
- *Article 56(1)(b) L 4375/2016 / Article 38(1)(c) recast Asylum Procedures Directive:* Decisions mention that the *non-refoulement* principle is provided by law and applied in practice, and refer to Turkish authorities' denial of allegations of returning Syrians to Syria, without assessing credible sources citing such practices;
- *Article 56(1)(d) L 4375/2016 / Article 38(1)(d) recast Asylum Procedures Directive:* Decisions refer to the provisions of Turkish legislation and the number of Syrians present in Turkey;
- *Article 56(1)(e) L 4375/2016 / Article 38(1)(e) recast Asylum Procedures Directive:* Decisions state that temporary protection status is granted to Syrian nationals and that the person "if granted, he shall be entitled to rights equivalent to those provided for in the Geneva Convention (in particular with regard to the right to work, access to education, health care and social security)." The decisions cite an ECRE / Dutch Council for Refugees note,<sup>421</sup> and a report of the Council of Europe Special Representative on Migration and Refugees, even though their findings do not corroborate the conclusion of the decision.<sup>422</sup>

<sup>420</sup> Decisions on file with the author.

<sup>421</sup> ECRE, *The DCR/ECRE desk research on application of a safe third country and a first third country of asylum concepts to Turkey*, 20 May 2016, available at: <http://bit.ly/2p2dX2S>.

<sup>422</sup> The DCR/ECRE note *inter alia* concludes that "the asylum system in Turkey is characterized by multiple deficiencies, including its dual structure and maintenance of a "geographical limitation" to the 1951 Refugee Convention, lack of registration of asylum applications, routine push-backs, lack of procedural safeguards during the asylum procedure and access to effective remedies in law and in practice" and that as of access to the labour market, access to health care and education for Syrian refugees granted temporary protection, 'there remains a huge gap between what is stipulated in the law and access to such rights in practice'; The

This line of reasoning is also followed to a great extent by the Appeals Committees. Second instance decisions rely on the information provided by the letters of the Turkish authorities, considered as diplomatic assurances “of particular evidentiary value”, so as to conclude that the safety criteria are fulfilled, even if this conclusion is not supported by the facts of the case.

This was for example the case of a Syrian appellant, who managed to enter Turkey from Syria after four attempts. According to his allegation, he failed to enter during the first two attempts, out of fear of shooting by Turkish border guards. On his third attempt, he was allegedly stripped and hit by soldiers, who stole his personal belongings and returned him together with the rest of the group to Syria. During his short stay in Turkey, after his fourth attempt, he had been victim of two racist attacks but the police refused to provide assistance and threatened him with arrest. Upon his first attempt to reach Greece, he was arrested by the Turkish Coast Guard and placed in detention. He was provided only bread and cheese and was allowed to use the bathroom only once a day. In the evenings the guards walked among detainees and kicked them. Three days later, he was transferred to a police station where police officers informed the detainees that they would either pay €50 to be transferred to Istanbul or they would be transferred to a remote refugee camp in order to be returned to Syria. With its decision issued by a 2:1 majority, the Appeals Committee rejected the appeal and upheld the first instance decision of inadmissibility. The Committee found that “the facts invoked by the appellant regarding his arrest by the Turkish Coast Guard, his detention in unacceptable conditions and the violent and inhumane behaviour against him... although contrary to the Rule of Law, could not be interpreted as persecution, because they ultimately aimed to implement the Agreement between Greece and Turkey on the treatment of Syrian refugees. For this reason, the majority of the Committee does not infer that these incidents, which it considers to be true, are acceptable in any sense. However, it considers that they are isolated incidents... and furthermore, taking for granted that they are not based on any specific characteristic of the applicant and the other persons who were with him, it considers that they do not constitute a generalised practice.”<sup>423</sup>

### **The Council of State interpretation**

On 22 September 2017, the Council of State rejected the application for annulment brought by two Syrian nationals and upheld the Appeals Committees decisions by which the applications for international protection have been rejected as inadmissible based on the safe third country concept.<sup>424</sup>

#### *Threat to life or freedom, serious harm and refoulement*

In its ruling, the Council of State agreed with the Appeals Committee that the criteria of protection from threat to life or freedom, serious harm and *refoulement* were fulfilled by Turkey, referring on the one assurances provided in the aforementioned letters, as well as the large number of Syrians present in Turkey.<sup>425</sup> Moreover, the Council of State agreed with the Appeals Committee that the allegations of Turkey’s practice of administrative detention of Syrians returning from Greece were unsubstantiated.<sup>426</sup>

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report of the fact-finding mission to Turkey by the Special Representative of the Secretary General on migration and refugees of the Council of Europe *inter alia* mentions that “delays in registration seriously limit access to healthcare in practice” and that only a very small percentage of the working-age Syrian population in Turkey was granted with work permit (2,000 applicant by late March 2016) whereas “the absence of data makes any attempt to evaluate the effectiveness of the system very difficult”.

<sup>423</sup> Decision on file with the author.

<sup>424</sup> Council of State, Decisions 2347/2017 and 2348/2017 (Plenary Session), 22 September 2017. For a summary of key points, see AIDA, ‘Greece: The ruling of the Council of State on the asylum procedure post EU-Turkey deal’, 4 October 2017, available at: <http://bit.ly/2y2tIND>. The cases have been supported by Metadrasi and Refugee Support Aegean.

<sup>425</sup> Council of State, Decision 2347/2017, 22 September 2017, paras 47-53.

<sup>426</sup> *Ibid*, para 51. Contrast with Council of the Europe, *Report of the fact-finding mission to Turkey by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees*, SG/Inf(2016)29, 28: “Syrians returned from Greece under the EU-Turkey agreement are also flown directly

A dissenting judgment stated that due to the situation of Turkey after the failed coup d'état of 15 July 2016:

“The assurances of the diplomatic authorities of this country, forming part of the hierarchy of said regime, have no credibility...What matters is not the protective legislation of a country, but whether and how that is implemented in practice. This is generally valid and in fact in every case, when it comes to a country like Turkey, where the rule of law has been dismantled. Therefore the sole mention and presentation of relevant Turkish legislation, without parallel investigation, through collection of evidence from published reports of independent consular authorities, journalists and independent non-governmental organisations, on the way this legislation is actually applied, could not support the judgment of the Appeals Committee.”<sup>427</sup>

*“Protection in accordance with the Geneva Convention”*

The Council of State has found that the notion of “protection in accordance with the Geneva Convention” does not require the third country to have ratified the Geneva Convention, and in fact without geographical limitation, or to have adopted a protection system which guarantees all the rights foreseen in that Convention. This reading was made through a juxtaposition of the “safe third country” concept under Article 38 of the Directive with the “European safe third country” concept under Article 39 – not transposed in Greek law – which expressly requires the third country to: (a) have ratified and respect the provisions of the Geneva Convention without geographical limitation; (b) apply an asylum procedure prescribed by legislation; and (c) have ratified the ECHR and respect its provisions, including the rules on effective remedy.<sup>428</sup>

The Court has further ruled that the Geneva Convention does not foresee uniform protection of all persons falling within its scope since, on the one hand its rights are differentiated depending on the degree of connection of refugees with the host countries, and on the other hand most of the rights foreseen may be restricted by way of reservations upon signature, ratification or accession to that Convention. Therefore, for the Court, in order for a third country to be considered as safe under Article 38(1)(e) of the Directive, it is sufficient that it provides “sufficient” protection of certain fundamental rights of refugees such as inter alia the right to health care and employment.<sup>429</sup>

Specifically as regards the status of temporary protection offered to Syrians in Turkey, the Council of State has held that the discretionary power of the government to cease such a status without verifying the cessation provisions of the Convention does not negate the character of the protection granted as being “in accordance with the Geneva Convention”, to the extent that it does not necessarily entail the return of former beneficiaries to their countries of origin.<sup>430</sup>

Two judges dissented on the interpretation of the “safe third country” concept, finding that Article 78(1) of the Treaty on the Functioning of the European Union requires the asylum acquis to be construed in line with the general economy and objectives of the Geneva Convention. They concluded that Turkey does not fulfil the criterion of 56(1)(e) since: the law does not allow Syrians to request refugee status in view of the geographical limitation under which Turkey signed the Geneva Convention; and temporary protection is not “in accordance with the Geneva Convention” as it amounts to a mass, non-individualised status revocable at any point by a decision of the Council of Ministers, which also does

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to Adana and transferred to Düzici camp... The camp itself was surrounded by a fence topped with barbed wire. I was particularly troubled by the situation in Düzici. I have no doubt that the residents of the camp are in de facto detention, without any of the safeguards afforded to them by law. The detention of Syrians returned from Greece is especially concerning since it would appear that it has no legal basis.”

<sup>427</sup> *Ibid*, para 60.

<sup>428</sup> *Ibid*, para 54.

<sup>429</sup> *Ibid*, paras 54-55. Note the dissenting judgment of two judges in para 60.

<sup>430</sup> *Ibid*, para 56.

not recognise to its beneficiaries all rights and entitlements foreseen in the Geneva Convention for refugees.<sup>431</sup>

With a public statement of 22 December 2017, the National Commission for Human Rights has recalled its previous position that a “[p]ossible characterization of Turkey as safe third country... collides with the Turkish geographical limitation to the ratification of the 1951 Geneva Convention (under which Turkey grants asylum only to people coming from Europe), as well as the European acquis and in particular Article 38 of Directive 2013/32/EU”. The National Commission for Human Rights also noted that:

“[D]espite the fact that the obligation to protect human rights must be fulfilled effectively in practice and not in theory, as well as the fact that domestic legislation is not in principle capable of ensuring adequate protection, as long as its effective application is the Court did not consider e.g. the fact that the exercise of the right to work of Syrian refugees who live in Turkey seems to be completely inadequate, because, according to credible statistical data, the percentage of Syrians who have acquired a work permit is extremely low.”

It also stated that the situation in Turkey, especially after the failed coup attempt of 15 July 2016 and its impact on the respect of fundamental human rights, has not been taken into consideration by the decisions of the plenary session of the Council of State.<sup>432</sup>

### **1.1.2. Applications lodged by non-Syrian nationalities with a recognition rate over 25%**

As mentioned above, the examination of admissibility of applications by non-Syrians is applied only for applications lodged by persons belonging to nationalities with a recognition rate over 25%.

In 2017, a total of 3,250 asylum applications have been submitted on the islands by non-Syrian nationals from countries with a recognition rate over 25%. No application has been deemed inadmissible based on the safe third country concept.<sup>433</sup> As far as GCR is aware, decisions on these applications conclude that the criterion set out in Article 56(1)(e) L 4375/2016 (“the possibility to apply for refugee status exists and, if the applicant is recognised as a refugee, to receive protection in accordance with the Geneva Convention”) is not fulfilled.

More precisely, largely based on the same correspondence between EU institutions, Turkish and Greek authorities and UNHCR, as is the case of decisions for Syrian applicants, the decision concluded that:

“In Turkey, despite the fact that the country has signed the Geneva Convention with a geographical limitation, and limits its application to refugees coming from Europe, for the rest of the refugees there is the possibility international protection to be requested (conditional refugee status/subsidiary protection), as foreseen by the relevant legislation. However, it is not clear from the sources available to the Asylum Service that there will be a direct access (*άμεση πρόσβαση*) to the asylum procedure, while assurances have not been provided by the Turkish authorities as to such direct access for those returned from Greece. In addition, there is no sufficient evidence to show that ‘conditional refugee status’ is granted to all of those who are eligible for it (in particular statistical data on recognition rates and the average duration of the asylum procedure).

Moreover, data available to the Asylum Service for the time being show that in case international protection would be granted to the applicant, this will not be in accordance with the

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<sup>431</sup> *Ibid*, para 60.

<sup>432</sup> National Commission on Human Rights, *Report on the condition of the reception and asylum system in Greece*, 22 December 2017, available at: <http://bit.ly/2nkf1P0>.

<sup>433</sup> Information provided by the Asylum Service, 15 February 2018.



Geneva Convention. According to the data available to the Asylum Service, conditional refugee status beneficiaries do not have the right to family reunification, contrary to those granted with subsidiary or temporary protection. Furthermore, the regime granted to [beneficiaries of conditional refugee status] lasts only until their resettlement by the UNHCR.”<sup>434</sup>

It should be noted, however, that even though the Asylum Service has not considered Turkey as a safe third country for non-Syrian applicants, EASO caseworkers systematically issue opinions recommending that these cases be dismissed inadmissible on the basis of the “safe third country” concept. As highlighted by Amnesty International, the “EASO opinions... demonstrate the pressure Greece is under to accept Turkey as a safe third country for Syrians and non-Syrians like.”<sup>435</sup>

## 1.2. Connection criteria

Article 56(1)(f) L 4375/2016 requires there to be a connection between the applicant and the “safe third country”, which would make return thereto reasonable. No further guidance is laid down in national legislation as to the connections considered “reasonable” between an applicant and a third country.<sup>436</sup>

As it appears from first instance inadmissibility decisions issued to Syrian nationals, the Asylum Service holds that the fact that an applicant would be subject to a temporary protection status upon return is sufficient in itself to establish a connection between the applicant and Turkey, even in cases of very short stays and in the absence of other links (see [Annex II](#)).<sup>437</sup>

The Council of State rulings of 22 September 2017 have interpreted the connection criteria further. The court has deemed that transit from a third country, in conjunction with specific circumstances applicable to the individual (*inter alia* the length of stay in that country or the proximity of that country to the country of origin), may be considered as a connection between the applicant and the third country. Accordingly, the Council of State has accepted the applicants’ respective stays of one month and two weeks as sufficient.<sup>438</sup>

The approach of the Council of State has largely been echoed by the Appeals Committees in recent months. GCR is aware of only two Appeal Committee decisions where the connection criteria were considered not to be fulfilled.<sup>439</sup> However, in these two cases, the applicants had stayed in Turkey for no more than 8 and 15 days respectively.

Nevertheless, in one of these cases, the 9<sup>th</sup> Appeals Committee did state that “geographical proximity of a country to the country of origin cannot in itself justify a sufficient connection, in the absence of conditions such as a reasonable period of stay of the existence of a supporting network”, as such a finding would effectively preclude an individualised assessment of each case as required by the law and

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<sup>434</sup> Decision on file with the author.

<sup>435</sup> Amnesty International, *Greece: Lives on hold – Update on situation of refugees and migrants on the Greek islands*, EUR25/6745/2017, 14 July 2017, available at: <http://bit.ly/2wuiiSx>, 4.

<sup>436</sup> Article 38(2)(a) recast Asylum Procedures Directive requires the establishment of rules for such a connection: UNHCR, *Legal considerations on the return of asylum-seekers and refugees from Greece to Turkey*, 23 March 2016, available at: <http://bit.ly/1Mrxmnc>, 6.

<sup>437</sup> Note that the decision refers to the applicant’s “right to request an international protection status”, even though persons under temporary protection are barred from applying for international protection: AIDA, *Country Report Turkey, 2017 Update*, March 2018.

<sup>438</sup> Council of State, Decision 2347/2017, 22 September 2017, para 62; Decision 2348/2017, 22 September 2017, para 62. Note the dissenting opinion of the Vice-President of the court, stating that transit alone cannot be considered a connection, since there was no voluntary stay for a significant period of time.

<sup>439</sup> 9<sup>th</sup> Independent Appeals Committee, Decision 15602/2017; 11<sup>th</sup> Independent Appeals Committee, Decision 14011/2017. See also AIDA, ‘Greece: Further interpretation of the safe third country concept’, 22 October 2017, available at: <http://bit.ly/2gwgzSS>; GCR, ‘Πρώτη θετική απόφαση για εξυπηρευόμενο του ΕΣΠ μετά τις αποφάσεις του Συμβουλίου της Επικρατείας που έκριναν την Τουρκία «ασφαλή χώρα»’, 20 October 2017, available in Greek at: <http://bit.ly/2BCiH3y>.



would result in all nationals of ‘neighbouring’ countries being treated in the same manner.<sup>440</sup> For its part, the 11<sup>th</sup> Appeals Committee stressed that a sufficient connection may be deduced from the existence of family or community ties, prior residence, visits for longer periods, studies or language and cultural bonds, but not solely from transit.<sup>441</sup>

### 1.3. Procedural safeguards

Where an application is dismissed as inadmissible on the basis of the “safe third country” concept, the asylum seeker must be provided with a document informing the authorities of that country that his or her application has not been examined on the merits.<sup>442</sup> This guarantee is complied with in practice.

## 2. First country of asylum

The “first country of asylum” concept is a ground for inadmissibility (see [Admissibility Procedure](#) and [Fast-Track Border Procedure](#)).

According to Article 55 L 4375/2016, a country shall be considered to be a “first country of asylum” for an applicant provided that he or she will be readmitted to that country, if the applicant has been recognised as a refugee in that country and can still enjoy of that protection or enjoys other effective protection in that country, including benefiting from the principle of *non-refoulement*.

The guarantees applicable to the “first country of asylum” concept have been lowered by L 4375/2016 compared to the previous legal framework, in force prior to April 2016. While Article 19(2) PD 113/2013 required the Asylum Service to take into account the safety criteria of the “safe third country” notion when examining whether a country qualifies as a “first country of asylum”, this requirement has been dropped in Article 55 L 4375/2016. This means, for instance, that application can be dismissed as inadmissible on the ground of first country of asylum even if said country, in the current context Turkey, does not satisfy the criteria of a “safe third country”.

The “first country of asylum” concept is not applied as a stand-alone inadmissibility ground in practice. No application was rejected on the sole ground of the “first country of asylum” concept in 2017.<sup>443</sup>

## 3. Safe country of origin

According to Article 57(1) L 4375/2016, safe countries of origin are:

- (a) Those included in the common list of safe countries of origin by the Council of the EU; and
- (b) Third countries, in addition to those foreseen in the common list, which are included in the national list of safe countries of origin and which shall be established and apply for the examination of applications for international protection and published, issued by a Joint Ministerial Decision by the Ministers of Interior and Administrative Reconstruction and Foreign Affairs.

A country shall be considered as a “safe country of origin” if, on the basis of legislation in force and of its application within the framework of a democratic system and the general political circumstances, it can be clearly demonstrated that persons in these countries do not suffer persecution, generally and permanently, nor torture or inhuman or degrading treatment or punishment, nor a threat resulting from the use of generalised violence in situations of international or internal armed conflict.<sup>444</sup>

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<sup>440</sup> 9<sup>th</sup> Independent Appeals Committee, Decision 15602/2017, 29 September 2017.

<sup>441</sup> 11<sup>th</sup> Independent Appeals Committee, Decision 14011/2017.

<sup>442</sup> Article 56(2) L 4375/2016.

<sup>443</sup> Information provided by the Asylum Service, 15 February 2018.

<sup>444</sup> Article 57(3) L 4375/2016.

To designate a country as a “safe country of origin”, the authorities must take into account *inter alia* the extent to which protection is provided against persecution or ill-treatment through:<sup>445</sup>

- ❖ The relevant legal and regulatory provisions of the country and the manner of their application;
- ❖ Compliance with the ECHR, the International Covenant on Civil and Political Rights (ICCPR), namely as regards non-derogable rights as defined in Article 15(2) ECHR, the Convention against Torture and the Convention on the Rights of the Child;
- ❖ Respect of the *non-refoulement* principle in line with the Refugee Convention; and
- ❖ Provision of a system of effective remedies against the violation of these rights.

A country may be designated as a “safe country of origin” for a particular applicant only if, after an individual examination of the application, it is demonstrated that the applicant (a) has the nationality of that country or is a stateless person and was previously a habitual resident of that country; and (b) has not submitted any serious grounds for considering the country not to be a safe country of origin in his or her particular circumstances and in terms of his or her qualification as a beneficiary of international protection.<sup>446</sup> The “safe country of origin” concept is a ground for applying the [Accelerated Procedure](#).

To date, there is no national or EU common list of safe countries. Therefore the rules relating to safe countries of origin in Greek law have not been applied in practice and there has been no reference or interpretation of the abovementioned provisions in decision-making practice. The adoption of such a list does not seem to be envisaged in the future.

## G. Relocation

### Relocation statistics: 22 September 2015 – 28 January 2018

Relocation from Greece		
	Submitted requests	Relocations
<b>Total</b>	24,908	21,731
Germany	5,897	5,373
France	5,174	4,394
Netherlands	1,862	1,754
Sweden	1,682	1,656
Finland	1,287	1,202
Portugal	1,275	1,192

Source: Asylum Service: <http://bit.ly/2DQN0q2>.

The relocation scheme set up by Council Decisions (EU) 2015/1523 and 2015/1601 in September 2015, for a target of 160,000 asylum seekers, was designed as an emergency measure to alleviate pressure on Italy and Greece and constitutes a partial derogation to the Dublin Regulation rules. Out of the target of 66,400 asylum seekers to be relocated from Greece, 21,731 had effectively been transferred as of 28 January 2018. The European Commission has been regularly reporting on the scheme, highlighting a number of challenges resulting in slow and inefficient implementation of Member States’ commitments.<sup>447</sup>

<sup>445</sup> Article 57(4) L 4375/2016.

<sup>446</sup> Article 57(2) L 4375/2016.

<sup>447</sup> The Commission’s reports on relocation and resettlement are available at: <http://goo.gl/VkOUJX>.

Since September 2015, a total of 30,836 places for relocation were offered to Greece by the countries participating in the scheme:

Relocation pledges to Greece	
Member State	Places offered
Belgium	1,055
Bulgaria	960
Croatia	225
Cyprus	160
Czech Republic	30
Estonia	382
Finland	1,349
France	5,770
Germany	6,740
Ireland	1,132
Latvia	363
Lichtenstein	10
Lithuania	1,070
Luxembourg	298
Malta	138
Netherlands	1,950
Norway	685
Portugal	2,030
Romania	1,172
Slovakia	50
Slovenia	349
Spain	1,875
Switzerland	600
<b>Total</b>	<b>30,836</b>

Source: Asylum Service: <http://bit.ly/2DQN0q2>.

In accordance with Council Decisions 2015/1523 and 2015/1601 the relocation scheme was officially ceased at the end of September 2017, but the Relocation Unit continued operations on pending cases until the end of 2017.

UNHCR called for the relocation scheme to be continued beyond the 26 September 2017 deadline and for the 75% average recognition rate as a threshold for relocation to be lowered. As highlighted by UNHCR, the need for such responsibility-sharing mechanisms remains acute.<sup>448</sup>

The particular issue of whether or not the deadline of arrival in Greece prior to 20 March 2016, i.e. the launch of the EU-Turkey statement, in order for applicants to be eligible relocation is actually provided for in the Council Decisions was raised by GCR and addressed to the Asylum Service several times, on

<sup>448</sup> UNHCR, 'UNHCR calls for the EU relocation scheme to continue', 26 September 2017, available at: <http://bit.ly/2fz1OSH>.

the basis of at least 12 cases assisted by GCR.<sup>449</sup> According to the Asylum Service, this time limit was set by the Member States clearly in other agreements than the Council Decisions and that this was the official position of the European Commission as well.<sup>450</sup>

GCR has further addressed an official letter to the EU Commission as follows:<sup>451</sup>

“With the present letter, the Greek Council for Refugees would like to: a) ask the EU Commission for a clarification on the issue of determination of the applicants for international protection in Greece, eligible for the relocation scheme and b) ask the Commission to consider undertaking the appropriate measures in order for the Greek authorities to comply with their obligations under the Council Decisions 2015/1601 and 2015/1523...

Regarding the issue of determination of the applicants for international protection in Greece, eligible for the relocation scheme, no other restriction, apart from the recognition rate of the nationality, is provided in the above mentioned Council Decisions, nor in any other legal or official EU document. However, since the 20th of March 2016, date of implementation of the EU-Turkey Statement, Greece considers ineligible for the relocation scheme, all third country nationals who have arrived after that date, regardless of their nationality or vulnerability.

Addressing this issue, on 11th August 2017, Mr. Avramopoulos, EU Commissioner on Migration, Home Affairs and Citizenship, gave the following answer to a parliamentary question on behalf of the Commission: “The EU-Turkey statement did not have an amending effect on the Council Decisions on relocation, and it remains the national competence of Greece to decide whether an applicant for international protection in Greece is eligible for the relocation scheme.

Furthermore, the Fifteenth Report from the Commission to the European Parliament, the European Council and the Council, on relocation and resettlement (6 September 2017) clearly states that: “There are still eligible applicants to be relocated both from Greece and Italy to the other Member States. Moreover, new eligible applicants are arriving to Italy every day and increased support to Italy is needed in order to alleviate the current migratory pressure. Furthermore, new eligible applicants are identified by Greece and continuing relocation pledges by Member States are therefore still required. The Commission welcomes the ruling of 6 September 2017 in which the Court confirmed the validity of the second Council Decision on relocation and dismissed the actions brought by Slovakia and Hungary. The Council Decisions apply to all eligible applicants arriving in the territory of Italy and Greece until 26 September 2017. Therefore, persons who arrived up to that date and meet all the requirements in the Council Decisions, are eligible for relocation and should be transferred to other Member States within a reasonable period of time thereafter. Therefore, it is crucial that all Member States, in particular Poland, Hungary and, the Czech Republic as well as those that have not used-up their allocation in full, step-up their efforts to relocate all eligible applicants from both Greece and Italy. This is particularly important for Italy where a significant number of applicants eligible for relocation have arrived since the beginning of 2017 and more could potentially arrive by 26 September. Member States should therefore continue providing pledges both for Italy and Greece as needed. The Commission will continue providing the financial support for the relocation of all those eligible, as established in the Council Decisions.

Despite the above explanations provided written and officially, Commissioner Avramopoulos slightly altered Commission’s position on the issue, on 11th October 2017, by replying to a

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<sup>449</sup> GCR, Document No 521/2017.

<sup>450</sup> Asylum Service, Document No 15958/2017.

<sup>451</sup> GCR, Document No 626/2017.

parliamentary question before LIBE Committee, on the event of Presentation of the Communication on the Delivery of the European Agenda on Migration. There the Commissioner stated that: “Member states’ position was clear, that they would not relocate applicants arriving to the Greek islands after the entry into force of the EU-Turkey Statement. Migrants who arrived to the Greek islands after the 20th of March 2016, fall under the scope of this EU-Turkey Statement.

Consequently, it remains unclear, whether or not the Commission holds the opinion that applicants who arrived on the Greek islands after the 20th March 2016, and fall therefore under the scope of EU-Turkey Statement, are eligible or not for the relocation scheme, provided that they belong to a nationality with recognition rate 75% or higher union-wide, on the first instance.

To this day, Greece holds the opinion that the above mentioned category of applicants should be excluded from the relocation scheme, based merely on the Member States’ position not to relocate applicants who arrived to the Greek islands after the 20th of March 2016. Surprisingly, no legal-binding document supports this opinion and decision of the Greek state. As a result, as of 26 October 2017, only 21.202 applicants were relocated from Greece, out of 63,302 commitments which had been legally foreseen in the Council Decisions. According to the Greek Asylum Service, as of 22 October 2017, only 27.449 registered applicants for international protection have been found eligible for the relocation scheme.

In the light of the above, GCR urges the Commission to:

- a. Clarify the Commission’s opinion on the issue of whether or not applicants who arrived on Greek islands after the 20th March 2016, and fall therefore under the scope of EU-Turkey Statement, are eligible for the relocation scheme, provided that they belong to a nationality with recognition rate 75% or higher union-wide, on the first instance, according the provisions of Council Decisions 2015/1601 and 2015/1523,
- b. Consider undertaking the appropriate measures in order for the Greek authorities to comply with their obligations under the Council Decisions 2015/1601 and 2015/1523 and more specifically for excluding all applicants who arrived on Greek islands after the 20th March 2016, from the relocation scheme.”

GCR has received no answer to this letter yet.

The following section draws on information provided to GCR by the Asylum Service as of December 2017, unless otherwise specified.

## 1. The relocation procedure in practice

A special Relocation Unit had been created within the Asylum Service for the implementation of the relocation scheme. The Relocation Unit in Athens was stationed in the region of **Alimos**.

The relocation scheme was applied to persons:

- ❖ Belonging to a nationality with an EU-wide average recognition rate of 75% or above; and
- ❖ Entering Greece between 16 September 2015 and 19 March 2016.

During the registration of an asylum seeker, if he or she fell under the scope of the relocation scheme, the person as requested to state his or her preference over 8 European countries out of the list provided to him or her by the Asylum Service, to which he or she would wish to be relocated.

Subsequently, the Relocation Unit conducted the so-called “matching” of the asylum seeker to a Member State or according to the wording used in Article 5(3) of the Council Decisions – “conducts the identification of the individual applicants who could be relocated to a specific Member State” – taking

into account the preferences stated by the applicants, where possible. According to Recitals 27 and 28 of Council Decision 2015/1523 and Recital 33 and 34 of Council Decision 2015/1601:

“The integration of applicants in clear need of international protection into the host society is the cornerstone of a properly functioning Common European Asylum System.[...]Therefore, in order to decide which specific Member State should be the Member State of relocation, specific account should be given to the specific qualifications and characteristics of the applicants concerned, such as their language skills and other individual indications based on demonstrated family, cultural or social ties which could facilitate their integration into the Member State of relocation. In the case of particularly vulnerable applicants, consideration should be given to the capacity of the Member State of relocation to provide adequate support to those applicants and to the necessity of ensuring a fair distribution of those applicants among Member States. With due respect for the principle of non-discrimination, Member States of relocation may indicate their preferences for applicants based on the above information on the basis of which Italy and Greece, in consultation with EASO and, where applicable, liaison officers, may compile lists of possible applicants identified for relocation to that Member State.”

For the implementation of all aspects of the relocation procedure as described in Article 5 of the Council Decisions, Member States may decide to appoint liaison officers to Italy and to Greece. Those liaison officers in Greece were the contact point of the Greek Relocation Unit with their respective Member State and facilitated administrative cooperation and information exchange.

### 1.1. Interviews of asylum seekers conducted in Greece

After the “matching” of the applicant to the Member State of relocation, several Member and Associated States, including France, Netherlands, Norway, Switzerland, Latvia, Lithuania, Estonia and Ireland conducted interviews with the person eligible for relocation in Greece, usually in the Member State’s embassy. This step was not explicitly mentioned in the Council Decisions but was considered to fall within the scope of each country’s right to collect all the information needed in order to decide if an applicant constitutes a “danger to their national security or public order” or whether “there are serious reasons for applying the exclusion provisions”,<sup>452</sup> to apply the grounds for rejecting relocation. This step was first introduced by France, following the November 2015 attacks in Paris, and follows French practice on resettlement.<sup>453</sup>

The lack of an explicit provision for such a procedure in the Council Decisions creates a vacuum that leaves applicants unprotected. According to GCR’s first-hand information, the interviews conducted in the French embassy, after the initial acceptance of the relocation applicants by **France**, were proper refugee status determination interviews, going beyond the identification of grounds for applying the exclusion provisions.<sup>454</sup> These interviews were usually conducted by two officers of the French Office for the Protection of Refugees and Stateless Persons (OFPRA), with interpretation, but without keeping any kind of record of the procedure. The presence of a legal advisor in those interviews was prohibited. Similar interviews were conducted in the embassy of the **Netherlands** as well.<sup>455</sup>

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<sup>452</sup> Article 5(7) Council Decisions 2015/1523 and 2015/1601.

<sup>453</sup> AIDA, *Admissibility, responsibility and safety in European asylum procedures*, September 2016, 28.

<sup>454</sup> AIDA, Country Report France, 2017 Update, February 2018, available at: <http://bit.ly/2BsOFmB>, 70-71.

<sup>455</sup> AIDA, Country Report Netherlands, 2017 Update, March 2018, available at: <https://bit.ly/2G7z6Eo>, 51-52.

## 1.2. Relocation of unaccompanied children

596 unaccompanied children have been registered in the relocation scheme since September 2015, while 260 have already been accepted by a Member State throughout 2017.<sup>456</sup>

Accepted requests regarding unaccompanied children: 2017	
Member State	Unaccompanied children accepted
Belgium	8
Finland	40
France	7
Germany	44
Ireland	47
Luxembourg	9
Netherlands	52
Norway	11
Portugal	10
Romania	1
Spain	15
Switzerland	9
Sweden	2
Croatia	2
Slovenia	1
Malta	1
Lithuania	1
<b>Total</b>	<b>260</b>

Source: Asylum Service, 15 February 2018.

It is also noted that only 8.6% of the people who were eventually relocated under the scheme were considered as vulnerable cases.<sup>457</sup>

## 1.3. Duration of the relocation procedure

The speed of the relocation procedure was of crucial importance for Member States and the implementing authorities. According to the Asylum Service, the average time between: (a) the registration of an asylum seeker eligible for relocation and the outgoing request; (b) the outgoing request and the receipt of an answer; and (c) the receipt of a positive decision and the transfer, cannot be estimated accurately.<sup>458</sup> The timeframe of the relevant Council Decisions was almost never respected since, on the one hand, there were usually not enough pledges offered by the Member States, while on the other hand, unpredictable administrative issues constantly arose. Examples included rejected Dublin requests channelled through the relocation scheme, especially when Germany was the country rejecting the Dublin request, and long delays for a reply from a Member State, causing withdrawal of the application on behalf of the Greek Asylum Service and re-submission of the case to another Member State.

<sup>456</sup> Information provided by the Asylum Service, 15 February 2018.

<sup>457</sup> *Ibid.*

<sup>458</sup> *Ibid.*



## 2. Refusal of relocation

### 2.1. Grounds for not sending an outgoing relocation request

The first ground for not sending a relocation request is the applicability of the Dublin Regulation, where the family reunification provisions come into play (see section on [Dublin](#)).

Secondly, after the initial registration of the application, the Relocation Unit conducts an internal search in domestic and European lists, such as the National List of Unwanted Aliens and the Schengen Information System (SIS II). If an entry ban in the Schengen area has been imposed on a certain applicant, the Asylum Service does not refer this applicant to the emergency relocation mechanism.

However, even in cases where a “hit” appears in those lists, an outgoing relocation request is not sent and the applicant is transferred to the Greek asylum procedure. A mere “hit” in those lists could simply be a synonymy or point to two very similar names. Yet a more in-depth investigation of the case does not take place, since the relocation procedure must move very fast and such investigations need more time. In 2016, GCR intervened in the case of a Syrian family, where such a “hit” was found in SIS II regarding the father. The Relocation Unit removed the whole family from the relocation programme and set a specific day for an asylum interview with an officer of the Asylum Service. The family asked for GCR’s assistance to re-enter the relocation programme, explaining that the “hit” could never be accurate, since the whole family had never travelled outside Syria before. After several months of long discussions with the Relocation Unit and after communicating the problem to Supplementary Information Request at the National Entries (SIRENE) of the Department of the Hellenic Police, the family re-entered relocation and was eventually accepted by a Member State.

### 2.2. Grounds for rejecting relocation requests

Article 5(7) of Council Decisions 2015/1523 and 2015/1601 gives Member States “the right to refuse to relocate an applicant only where there are reasonable grounds for regarding him or her as a danger to their national security or public order or where there are serious reasons for applying the exclusion provisions set out in Articles 12 and 17 of [the recast Qualification Directive]”.

According to the unpublished Relocation Protocol, adopted by Member States participating in the relocation programme, when the ground for rejection is the application of exclusion provisions, this should be communicated to the Greek Relocation Unit, while in cases of rejection due to national security or public order reasons, the communication should be addressed to the Greek Security Forces. Unfortunately, in practice, Member States made use of the provision of Article 5(7) of the Council Decisions without specifying the reason of rejection or providing any additional information to the Greek authorities.<sup>459</sup> When a person was rejected by a Member State, he or she is not allocated to another Member State, but informed that Greece was responsible for the examination of his or her asylum application from that point on.

The abovementioned rejection is not delivered in writing to the respective applicant. It is only orally announced and does not inform the person of the real reasons for his or her rejection or give him or her the possibility to contest them in order to re-enter the relocation scheme. Since September 2015, dozens of applicants have requested GCR’s assistance in order to find out the reason for their rejection. The denial of a written decision rejecting the relocation request is justified on the basis that relocation is a burden-sharing mechanism between European Member States and being an applicant or a beneficiary of the relocation programme is not a right, contrary to seeking asylum. Accordingly, no obligation is incumbent on the authorities to inform the person officially – in writing – in case of rejection. Moreover, no right to appeal is provided against such a rejection.

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<sup>459</sup> Information provided by the Asylum Service, 15 February 2018.

During 2017, there were 1,023 rejections of relocation requests. In 448 cases, applicants were at first accepted in the scheme and subsequently rejected (*επιγενόμενη απόρριψη*) on exclusion or security grounds:

Rejected relocation requests: 2017		
Member State	Rejections	Rejections after initial acceptance
Belgium	11	0
Bulgaria	1	0
Cyprus	18	0
Germany	380	0
Estonia	111	111
Finland	2	1
France	268	233
Ireland	38	11
Lichtenstein	3	0
Lithuania	13	0
Luxembourg	33	0
Malta	14	0
Netherlands	38	30
Norway	8	8
Romania	4	0
Slovakia	10	0
Sweden	17	0
Switzerland	54	54
<b>Total</b>	<b>1,023</b>	<b>448</b>

Source: Asylum Service, 15 February 2018.

### 3. Appeal against a transfer decision

Given that the applicant could not choose the Member State of relocation, he or she has a right to appeal against a relocation decision in accordance with the Dublin Regulation solely for the purpose of safeguarding his or her fundamental rights. Article 27(1) of the Dublin III Regulation, applicable *mutatis mutandis* in the relocation procedure, provides for the right to an effective remedy, in the form of an appeal or a review, in fact and in law, against a transfer decision. In practice, this applies where it is impossible to transfer an applicant to the Member State primarily designated as responsible because there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State, resulting in a risk of inhuman or degrading treatment.<sup>460</sup> This contrasts with the interpretation of the provision by the CJEU.<sup>461</sup>

In practice, few such appeals have been filed, given the fact that, when an applicant receives a positive decision for relocation to another Member State, he or she is simultaneously required to sign a resignation from the right to appeal. If the applicant does not wish to be relocated, he or she may also submit a subsequent application in order to enter the Greek asylum procedure.<sup>462</sup>

<sup>460</sup> Article 3(2) Dublin III Regulation.

<sup>461</sup> CJEU, Case C-155/15 *Karim v. Migrationsverket*, Judgment of 7 June 2016.

<sup>462</sup> AIDA, *Admissibility, responsibility and safety in European asylum procedures*, September 2016, 30.

## H. Information for asylum seekers and access to NGOs and UNHCR

### 1. Provision of information on the procedure

#### Indicators: Information on the Procedure

1. Is sufficient information provided to asylum seekers on the procedures, their rights and obligations in practice?  Yes  With difficulty  No
- ❖ Is tailored information provided to unaccompanied children?  Yes  No

Article 41 L 4375/2016 provides *inter alia* that applicants should be informed, in a language which they understand, on the procedure to be followed, their rights and obligations.

A number of actors are engaged in information provision concerning the asylum procedure. However, due to the complexity of the procedure and constantly changing legislation and practice, as well as bureaucratic hurdles, access to comprehensible information remains a matter of concern.<sup>463</sup> Given that legal aid is provided by law only for appeal procedures and only remains limited in practice (see [Regular Procedure: Legal Assistance](#)), applicants often have to navigate the complex asylum system on their own, without sufficient information.<sup>464</sup>

These challenges are corroborated by findings on the ground. A recent cross-sectional survey of Syrian nationals conducted in eight locations found that:

“[A] very low proportion of participants reported having had access to information on legal assistance, between 9.6% (**Samos**) and 30.1% (**Katsikas**). Information on asylum procedures was also generally limited, with only 11.0% (Samos) to 31.6% (Katsikas) of the population considering that they had received the necessary information... Participants interviewed in the qualitative study said that the lack of guidance and information on asylum procedures increased their feelings of uncertainty about the future, which was taking a toll on their mental and psychosocial well-being.”<sup>465</sup>

The language barrier also constitutes a persisting challenge. A study conducted in 11 sites in April 2017 demonstrated that “refugees and migrants in Greece do not always receive information in a language or format they can understand. This phenomenon creates serious language and communication barriers, which can generate feelings of insecurity and have detrimental effects on people’s lives.”<sup>466</sup>

Furthermore, the provision of information to persons detained in pre-removal detention facilities in a language that they understand continued to be deficient.<sup>467</sup>

Since 2013, the Asylum Service has produced an informational leaflet for asylum seekers, entitled “Basic Information for People Seeking International Protection in Greece”, available in 20 languages.<sup>468</sup>

<sup>463</sup> See e.g. the Asylum Service flowchart on the asylum procedure following the EU-Turkey statement at: <http://bit.ly/2DpZms5>.

<sup>464</sup> ActionAid et al., *Legal Aid (Individual Legal Representation in Asylum/Refugee Context) for Migrants, Asylum Seekers and Refugees in Greece: Challenges and Barriers*, January 2018, available at: <http://bit.ly/2FyEjRW>.

<sup>465</sup> Jihane Ben Farhat et al., *Syrian refugees in Greece: Experience with violence, mental health status, and access to information during the journey and while in Greece*, BMC Medicine, 13 March 2018, available at: <http://bit.ly/2FUOhj6>.

<sup>466</sup> Translators without Borders and Save the Children, *Language and comprehension barriers in Greece’s migration crisis*, June 2017, available at: <http://bit.ly/2tZfhEK>.

<sup>467</sup> UNHCR, *Explanatory Memorandum pertaining to UNHCR’s submission to the Committee of Ministers of the Council of Europe on developments in the management of asylum and reception in Greece*, May 2017, 10.

Information in 18 languages is also available on the site of the Asylum Service,<sup>469</sup> and a helpline with recorded information for asylum seekers in 10 languages is accessible via phone. A mobile application called “Asylum Service Application” was launched in April 2017.<sup>470</sup>

In January 2018, the Asylum Service published an illustrated booklet with information tailored to asylum-seeking children, available in 6 languages.<sup>471</sup>

## 2. Access to NGOs and UNHCR

### Indicators: Access to NGOs and UNHCR

1. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice?  Yes  With difficulty  No
2. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice?  Yes  With difficulty  No
3. Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice?  Yes  With difficulty  No

Access of NGOs to Reception and Identification Centres, camps on the mainland and pre-removal detention facilities is subject to prior permission by the competent authorities. UNHCR is present on the hotspot facilities and sites of the mainland.

Access of asylum seekers to NGOs and other actors depends on the situation prevailing on each site, for instance overcrowding, in conjunction with the availability of human resources.

## I. Differential treatment of specific nationalities in the procedure

### Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded?  Yes  No  
❖ If yes, specify which: Syria
2. Are applications from specific nationalities considered manifestly unfounded?<sup>472</sup>  Yes  No  
❖ If yes, specify which:

## 1. Relocation

The Relocation scheme was only applicable to nationalities with an EU-average recognition rate of 75% or above.

## 2. Syria fast-track

Fast-track processing under the regular procedure has been applied since 23 September 2014 for Syrian nationals and stateless persons with former habitual residence in Syria (see section on Regular

<sup>468</sup> Asylum Service, *Basic Information for People Seeking International Protection in Greece*, June 2013, available at: <http://bit.ly/1Wuhzb7>.

<sup>469</sup> Asylum Service, Information in 18 languages, available at: [http://asylo.gov.gr/?page\\_id=159](http://asylo.gov.gr/?page_id=159).

<sup>470</sup> Government, ‘Η Υπηρεσία Ασύλου και το Χαροκόπειο Πανεπιστήμιο ανακοινώνουν τη δοκιμαστική λειτουργία της εφαρμογής Asylum Service Application’, 3 April 2017, available in Greek at: <http://bit.ly/2Gse9Rv>.

<sup>471</sup> Asylum Service, *I am under 18 and I am seeking asylum in Greece*, available at: [http://asylo.gov.gr/?page\\_id=6210](http://asylo.gov.gr/?page_id=6210).

<sup>472</sup> Whether under the “safe country of origin” concept or otherwise.

Procedure: Fast-Track Processing). In 2016, a total of 2,896 positive decisions were issued under this procedure.<sup>473</sup> The Syria fast-track procedure is available only for Syrian nationals and stateless persons with former habitual residence in Syria who enter the Greek territory before the entry into force of the EU-Turkey Statement. *A contrario* applications of those arrived on the islands after the 20 March 2016 are examined under the [Fast-Track Border Procedure](#).

### 3. Fast-track border procedure on the islands

As mentioned in [Fast-Track Border Procedure](#), the implementation of the EU-Turkey statement pursuant to Article 60(4) L 4375/2016 has varied depending on the nationality of the applicants concerned. In particular:

- Applications by **Syrian** asylum seekers are examined on admissibility on the basis of the [Safe Third Country](#) concept, with the exception of Dublin cases and vulnerable applicants who are referred to the regular procedure;
- Applications by non-Syrian asylum seekers from countries with a recognition rate **below 25%** are examined only on the merits;
- Applications by non-Syrian asylum seekers from countries with a recognition rate **over 25%** are examined on both admissibility and merits (“merged procedure”).

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<sup>473</sup> Information provided by the Asylum Service, 15 February 2018.

## Reception Conditions

The recast Reception Conditions Directive has not yet been transposed into national law, with the exception of the [Detention](#) provisions, which have been partially transposed by L 4375/2016.<sup>474</sup> Therefore, PD 220/2007 transposing Directive 2003/9/EC, laying down minimum standards for the reception of asylum seekers, is still applicable. A draft law on the transposition of the recast Reception Conditions Directive was submitted to public consultation which came to an end on 31 October 2016.<sup>475</sup> No bill had been introduced to the Parliament by March 2018, despite the fact that the Directive should have been transposed into national law by July 2015. Since the transposition deadline has expired, the provisions of the Directive can be relied upon by an individual against the state, in line with established case law of the CJEU.<sup>476</sup>

Since 2016 responsibility for the reception of asylum seekers formally lies with the General Secretariat for Reception under the Ministry of Migration Policy.<sup>477</sup> However, as far as accommodation is concerned, responsibility is still shared between the National Centre for Social Solidarity (EKKA), the UNHCR accommodation scheme, and different actors managing temporary facilities.

### A. Access and forms of reception conditions

#### 1. Criteria and restrictions to access reception conditions

##### Indicators: Criteria and Restrictions to Reception Conditions

- Does the law make material reception conditions to asylum seekers in the following stages of the asylum procedure?

❖ Regular procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Dublin procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Admissibility procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Border procedure	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Fast-track border procedure	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Accelerated procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Appeal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Onward appeal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Subsequent application	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
- Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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Article 12(1) PD 220/2007 provides that the authorities competent to receive and accommodate asylum seekers, i.e. the Ministry of Migration Policy, shall take adequate measures in order to ensure that material reception conditions are available to applicants for asylum. These conditions must provide applicants with a standard of living adequate for their health, capable of ensuring their subsistence and to protect their fundamental rights. According to Article 17 PD 220/2007, the abovementioned standard of living must also be provided to persons who have special needs as well as to persons who are in detention.

The provision of all or some material reception conditions and health care is subject to the condition that applicants do not have sufficient means to maintain an adequate standard of living adequate for their

<sup>474</sup> Article 46 L 4375/2016.

<sup>475</sup> See *inter alia* GCR, *Observations on the Draft Law transposing Reception Directive*, 31 October 2016, available in Greek at: <https://goo.gl/MBRqno>; AIDA, 'Greece: New asylum reform transposing the recast Reception Conditions Directive', 19 October 2016, available at: <http://bit.ly/2IMoTIS>.

<sup>476</sup> See e.g. CJEU, Case C-103/88 *Costanzo*, Judgment of 22 June 1989.

<sup>477</sup> Articles 26-27 L 4375/2016.

health and capable of ensuring their subsistence.<sup>478</sup> This condition must be verified by the authorities competent to receive and accommodate asylum seekers. If it becomes clear that the applicant has sufficient means, these authorities may stop providing reception conditions to the extent that the applicant's subsistence needs are covered by own sources.<sup>479</sup> Applicants must in such case contribute, in full or in part, to the cost of the material reception conditions and of their health care depending on their own financial resources.<sup>480</sup>

The criteria and evidence used for the assessment of "sufficient means" are those applicable to Greece's social welfare framework.<sup>481</sup>

In practice, asylum seekers on the islands are excluded from some forms of reception conditions, as are applicants who are *de facto* detained in the transit zone of **Athens International Airport**.

## 2. Forms and levels of material reception conditions

### Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial allowance/vouchers granted to single adult asylum seekers as of 31 December 2017 (in original currency and in €): €90

Material reception conditions provided in PD 220/2007 include accommodation in reception centres and a financial allowance. Asylum seekers may not stay in reception centres for more than 1 year, after which they are assisted in finding accommodation.<sup>482</sup>

For persons declared as disabled, who have a disability degree over 67% certified by the relevant health committee, where accommodation in reception centres is not feasible, a disability benefit is granted for the duration of the examination of their asylum application.<sup>483</sup> The amount of financial assistance is defined in accordance with the level of assistance provided in social welfare legislation and is equal to that available to Greek nationals.<sup>484</sup>

A variety of accommodation schemes remain in place as of the end of 2017. This includes large-scale camps, initially designed as emergency accommodation facilities, hotels, apartments and NGO-run facilities (see [Types of Accommodation](#)).

UNHCR provides cash assistance in Greece as part of the "ESTIA" programme funded by the European Commission. The cash card assistance programme is being implemented throughout Greece in coordination with the Ministry of Migration Policy. As of January 2018, the international NGOs implementing it included: the International Federation of Red Cross and Red Crescent Societies (IFRC); Samaritan's Purse; International Rescue Committee (IRC); Catholic Relief Services (CRS); and Mercy Corps.

Eligibility is assessed on the basis of a person's date of arrival, legal status and current location. Persons should:<sup>485</sup>

- Have arrived after 1 January 2015;
- Have been registered by the Greek authorities; and

<sup>478</sup> Article 12(3) PD 220/2007.

<sup>479</sup> *Ibid.*

<sup>480</sup> Article 12(4) PD 220/2007.

<sup>481</sup> Article 12(5) PD 220/2007, citing L 57/73 "measures for the social protection of the financially weak groups and abolishment of the law concerning the poverty state".

<sup>482</sup> Article 13(2) PD 220/2007.

<sup>483</sup> Article 12(1) PD 220/2007.

<sup>484</sup> Article 4(1)(e)-(f) L 330/2005.

<sup>485</sup> UNHCR, *The Greece Cash Alliance*, 24 November 2017, available at: <http://bit.ly/2oi4Bkd>.



- Continue to reside in the country;
- Hold either a pre-registration or full registration document or any other valid official document issued by the Greek authorities;
- Be above the age of 18;
- Live in designated sites or in rented accommodation, thereby excluding refugees living in informal settlements;
- Not be employed by an NGO or UN agency; and
- Not be employed and receiving remuneration.

Between April 2017 and January 2018, a total of 58,725 eligible individuals are estimated to have received cash assistance at least one. Of the 39,233 persons receiving assistance in January 2018, 42% were children, 23% were women and 35% were men. One quarter of beneficiaries were families with an average size of five people. The amount distributed to each household is proportionate to the size of the family and ranges between €90 for single adults in catered accommodation and €550 for a family of seven in self-catering accommodation.<sup>486</sup>

Beneficiaries of the programme cash assistance reside in 94 locations in Greece, mainly **Athens** (43%), the **Eastern Aegean islands** (24%) and **Central Macedonia** (19%). The main nationalities are Syria (42%), Iraq (20%) and Afghanistan (19%).<sup>487</sup>

The programme has also had a positive impact on local communities, as this assistance is re-injected into the local economy, family shops and service providers.<sup>488</sup>

### 3. Reduction or withdrawal of reception conditions

#### Indicators: Reduction or Withdrawal of Reception Conditions

1. Does the law provide for the possibility to reduce material reception conditions?  
 Yes  No
2. Does the legislation provide for the possibility to withdraw material reception conditions?  
 Yes  No

Reception conditions may be reduced or withdrawn where the applicant:<sup>489</sup>

- (a) abandons the place of stay assigned without informing that authority or, where required, without obtaining permission;
- (b) does not comply with the obligation to declare personal data or does not respond to a request to provide information or does not attend the personal interview within the set deadline; or
- (c) has lodged a subsequent application;
- (d) has concealed their resources and illegitimately takes advantage of material reception conditions; or
- (e) violates the house rules of the reception centre.<sup>490</sup>

GCR is aware of a decision of the Head of the Open Accommodation Facility in **Diavata**, Northern Greece, operating under the Reception and Identification Service, issued in November 2017, which interrupted the accommodation of a Syrian asylum seeker due to alleged violation of the house rules of the centre. Following this decision, said applicant was denied access to any other reception facility.

<sup>486</sup> UNHCR, *Greece cash assistance*, January 2018, available at: <http://bit.ly/2EX9OXZ>.

<sup>487</sup> *Ibid.*

<sup>488</sup> European Commission, 'European Civil Protection and Humanitarian Aid Operations, Greece Factsheet', 11 January 2018, available at: <http://bit.ly/2Fk9joM>.

<sup>489</sup> Article 15(1) PD 220/2007.

<sup>490</sup> Article 15(5) PD 220/2007.

## 4. Freedom of movement

### Indicators: Freedom of Movement

1. Is there a mechanism for the dispersal of applicants across the territory of the country?  
 Yes  No
2. Does the law provide for restrictions on freedom of movement?  
 Yes  No

According to Article 6 PD 220/2007, applicants may move freely within the territory of Greece or the area assigned by the authorities and choose their place of residence,<sup>491</sup> subject to the possibility of restricting their stay at a specific area for reasons of public interest, public order or to ensure a fast and effective completion of the asylum procedure.<sup>492</sup> The assigned area cannot affect their private life and must allow them sufficient scope so as to enjoy access to all reception conditions. In any case, applicants must immediately inform the authorities competent to receive and examine their application, of any change in their address.<sup>493</sup>

In the same respect, Article 41(1)(d)(iii) L 4375/2016 provides that the applicant's freedom of movement may be restricted to a part of the Greek territory following a Decision of the Director of the Asylum Service.

### 4.1. The geographical restriction on the Eastern Aegean islands

In practice, this is in particular the case for persons subject to the EU-Turkey statement and the **Fast-Track Border Procedure**, whose movement is systematically restricted within the island where they have arrived. As detailed in **Reception and Identification Procedure**, the geographical restriction on the given island is initially imposed by a "postponement of deportation" decision of the Police.<sup>494</sup> According to this decision, the persons in question are ordered not to leave the island and to reside in the respective Reception and Identification Centre. After the full registration of the asylum application, an asylum seeker card is provided to the applicant and a stamp on the card mentions: "Restriction of movement on the island of [...]."

The lawfulness of the aforementioned practice is questionable, *inter alia* for the following reasons:

- A deportation decision followed by geographical restriction is systematically issued to all newly arrived persons, even though the majority have already expressed the intention to seek asylum upon arrival, thus prior to the issuance of a return decision;<sup>495</sup>
- The decision of the police which imposes the geographical restriction on the island is imposed indiscriminately, without any prior individual assessment or proportionality test. It is also imposed indefinitely, with no maximum time limit provided by law and with no effective remedy in place;<sup>496</sup>
- No prior decision of the Asylum Service is issued and no proper justification is provided for the imposition of restriction of movement on each island, as required by Article 7 of the recast Reception Conditions Directive. In particular, as provided by Decision 10464/2017 of the Director of the Asylum Service,<sup>497</sup> a geographical restriction on the island is imposed to any asylum seeker whose application has been lodged before the RAO of **Lesvos, Rhodes, Samos, Leros** and **Chios** and the AAU of **Kos**, with the exception of applications which have

<sup>491</sup> Article 6(1) PD 220/2007.

<sup>492</sup> Article 6(5) PD 220/2007.

<sup>493</sup> Article 6(1) PD 220/2007.

<sup>494</sup> Pursuant to Article 78 L 3386/2005.

<sup>495</sup> Article 36(3) L 4375/2016 clarifies that a "person who expresses his/her intention to submit an application for international protection is an asylum applicant".

<sup>496</sup> See e.g. Human Rights Committee, *General Comment No 27 – Article 12 (Freedom of Movement, CCPR/C/21/Rev.1/Add.9*, 2 November 1999, available at: <http://bit.ly/2uG06Fj>.

<sup>497</sup> Asylum Service Director Decision No 10464/2017, Gazette B' 1977/7.06.2017.

been referred to the regular procedure. Consequently, the geographical restriction on the islands is an indiscriminate measure, imposed *en masse*, without individual examination and without any assessment regarding the impact of the geographical restriction on applicants' "subsistence and... their physical and mental health",<sup>498</sup> taking into consideration reception conditions prevailing on the islands.

The geographical restriction is lifted in the following cases:

- All applicants receiving international protection have their restriction lifted immediately;
- All Syrian applicants whose claim has been determined as admissible due to the inapplicability of the safe third country concept have their restriction lifted immediately;
- All applicants exempted due to the applicability of the Dublin Regulation have their restriction lifted immediately;
- Following a change in practice in May 2017, Syrian applicants exempted due to vulnerability have their restriction lifted immediately, while non-Syrian applicants exempted due to vulnerability do not have their restriction lifted until they undergo the personal interview.<sup>499</sup>

The practice of indiscriminate imposition of the geographical restriction, initially by the Police and then by the Asylum Service, against every newly arrived person on the islands since the launch of the EU-Turkey Statement has led to a significant overcrowding. People are obliged to reside for prolonged periods in overcrowded facilities, where food and water supply is reported insufficient, sanitation is poor and security highly problematic (see [Conditions in Reception Facilities](#)). Moreover, the change of administrative practice in May 2017 as regards the lifting of the geographical restriction of vulnerable non-Syrian applicants has further exacerbated overcrowding on the islands.<sup>500</sup>

The National Commission for Human Rights has called on the Greek authorities "to re-examine the policy of geographical restriction and to eliminate the entrapment of applicants for international protection in the Greek islands".<sup>501</sup>

Failure to comply with the geographical restriction has serious consequences, including [Detention of Asylum Seekers](#), as applicants apprehended outside their assigned island are – arbitrarily – placed in pre-removal detention for the purpose of returning to their assigned island. They may also be subject to criminal charges under Article 182 of the Criminal Code and an order to return to the island, which has not been lifted even in cases where persons have been acquitted by the court.<sup>502</sup> Moreover, access to asylum is also restricted to those who have not comply with the geographical restriction since, according to the practice of the Asylum Service, their applications are not lodged outside the area of the geographical restriction.

GCR and the Bar Associations of Lesbos, Rhodes, Chios, Kos and Samos have lodged applications for annulment against the aforementioned Decision of the Director of the Asylum Service before the Council of State.<sup>503</sup> The hearing took place in February 2018 and the decision was pending as of the end of March 2018.

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<sup>498</sup> Article 17(2) recast Reception Conditions Directive.

<sup>499</sup> MSF, *A dramatic deterioration for asylum seekers on Lesbos*, July 2017, available at: <http://bit.ly/2vCJzAF>, 3.

<sup>500</sup> It should be mentioned that the average period of the first instance asylum procedure on the islands was 81 days in December 2017: Information provided by the Asylum Service, 15 February 2018.

<sup>501</sup> National Commission for Human Rights, *Report on the condition of Reception and Asylum system in Greece*, 22 December 2017, available at: <http://bit.ly/2nkf1P0>.

<sup>502</sup> See e.g. Misdemeanour Court of Thessaloniki, Decision 2627/2017.

<sup>503</sup> ERT, 'Chios, Lesbos, Rhodes, Kos and Samos contest restriction on refugees, migrants on islands', 1 March 2018, available at: <http://bit.ly/2H1SA9j>.

## B. Housing

### 1. Types of accommodation

#### Indicators: Types of Accommodation

1. Number of reception centres under EKKA: 58
2. Total number of places in reception centres under EKKA: 1,530
3. Total number of places in UNHCR accommodation: 18,898
4. Type of accommodation most frequently used in a regular procedure:  
 Reception centre  Hotel or hostel  Emergency shelter  Private housing  Other
5. Type of accommodation most frequently used in an accelerated procedure:  
 Reception centre  Hotel or hostel  Emergency shelter  Private housing  Other

The Greek reception system has been long criticised as inadequate, not least in the *M.S.S. v. Belgium and Greece* ruling of the ECtHR. Subsequent jurisprudence of the ECtHR has also found violations of Article 3 ECHR due to the failure of national authorities to provide asylum seekers with adequate living conditions.<sup>504</sup>

Parallel to the official reception system managed by the National Centre for Social Solidarity (*Εθνικό Κέντρο Κοινωνικής Αλληλεγγύης*, EKKA), a number of temporary – emergency – camps have been put in place in the mainland. Moreover, a UNHCR accommodation scheme has been in place since November 2015, primarily dedicated to asylum seekers eligible for relocation, and including Dublin family reunification candidates and vulnerable applicants since July 2016.

Since mid-2015, and as Greece was facing large-scale arrivals of refugees, those shortcomings have become increasingly apparent. The imposition of border restrictions and the subsequent closure of the Western Balkan route in March 2016, resulting in trapping a number of about 50,000 third-country nationals in Greece, created *inter alia* an unprecedented burden on the Greek reception system.<sup>505</sup> Since then, the number of reception places has increased mainly through temporary camps and the UNHCR accommodation scheme. Despite this increase, destitution and homelessness are still a risk of a significant number of applicants, including those who do not fall within the scope of these schemes. The situation on the islands also remains dire due to the overcrowding of reception facilities.

The law provides a legal basis for the establishment of different accommodation facilities. In addition to [Reception and Identification Centres](#),<sup>506</sup> the Ministry of Economy and Ministry of Migration Policy may, by joint decision, establish open Temporary Reception Facilities for Asylum Seekers (*Δομές Προσωρινής Υποδοχής Αιτούντων Διεθνή Προστασία*),<sup>507</sup> as well as open Temporary Accommodation Facilities (*Δομές Προσωρινής Φιλοξενίας*) for persons subject to return procedures or whose return has been suspended.<sup>508</sup> Notwithstanding these provisions, most temporary accommodation centres and emergency facilities operate without a prior Ministerial Decision and the requisite legal basis.

<sup>504</sup> ECtHR, *F.H. v. Greece*, Application No 78456/11, Judgment of 31 July 2014; *Al.K. v. Greece*, Application No 63542/11, Judgment of 11 March 2015; *Amadou v. Greece*, Application No 37991/11, Judgment of 4 February 2016; *S.G. v. Greece*, Application No 46558/12, Judgment of 18 May 2017.

<sup>505</sup> See also AIRE Centre and ECRE, *With Greece: Recommendations for refugee protection*, July 2016, 7-8.

<sup>506</sup> Article 10(1)-(2) L 4375/2016.

<sup>507</sup> Article 10(3) L 4375/2016.

<sup>508</sup> Article 10(4) L 4375/2016.

## 1.1. National Centre for Social Solidarity (EKKA) referral network

As of January 2018, a total of 1,530 places were available in 58 reception facilities mainly run by NGOs, of which 1,101 are dedicated to unaccompanied children.<sup>509</sup> This marks a decrease from 1,896 places available in January 2017.

More precisely this number includes:

- (a) 429 places for asylum seekers (mainly families and vulnerable asylum seekers) in 9 reception centres

Reception centres for asylum seekers in the EKKA network			
Centre	Operator	Location	Beds
Estia Profigon	Arsis	Athens	48
EKKA	EKKA	Thessaloniki	20
Filoxenio	Arsis, Municipality of Thessaloniki, GCR	Thessaloniki	28
Nostos	Nostos	Athens	70
Praksis apartments	Praksis	Athens, Thessaloniki	120
Praksis women apartments	Praksis	Athens	50
INEDIVIM	INEDIVIM	Athens	60
Arsis Thessaloniki apartments	Arsis	Thessaloniki	21
Arsis Volos apartments	Arsis	Volos	12
<b>Total</b>			<b>429</b>

Source: EKKA, 19 January 2018.

- (b) 783 places in 33 long-term shelters for unaccompanied children; and  
(c) 318 places in 16 short-term (“transit”) shelters for unaccompanied children.

The long-term and transit centres for unaccompanied children are discussed in [Reception of Unaccompanied Children](#).

EKKA still remains the only state authority with a referral network for the placement of the applicants.<sup>510</sup> The placement of the asylum seekers to these shelters is not automatic, as a request for placement should be to EKKA, the number of available places remains insufficient and a waiting list exists. This can be particularly problematic for the [Reception of Unaccompanied Children](#).

According to EKKA, the total number of requests for accommodation received in 2017 was 8,461 and corresponded to 12,184 persons. The total number of persons placed in accommodation was 4,286, indicating an acceptance rate of 35.2%. This represents a decrease of about 3% in the acceptance rate compared to 2016:

<sup>509</sup> Information provided by EKKA, 19 January 2018.

<sup>510</sup> EMN, *The Organisation of reception facilities for asylum seekers in the different Member States*, 2013, available at: <http://bit.ly/1J7ipn3>, 13.

Accommodation requests to EKKA: 2017				
Category of applicant	Requests	Persons	Persons accepted	Acceptance rate
Single adult	1,737	1,737	186	10.7%
Family	786	3,219	584	18.1%
Single-parent family	591	1,701	827	48.6%
Unaccompanied child	5,527	5,527	2,689	48.6%
<b>Total</b>	<b>8,461</b>	<b>12,184</b>	<b>4,286</b>	<b>35.2%</b>

Source: EKKA, 26 February 2018.

Out of the requests accepted in 2017, the rate of requests accepted within three months of submission was 84.9% for single adults, 53.5% for families, 59.4% for single-parent families and 63.5% for unaccompanied children. The remaining requests have either been accepted after a period exceeding three months, or have been cancelled.<sup>511</sup>

## 1.2. Temporary accommodation centres

As mentioned above, in 2016, in order to address the needs of persons remaining in Greece after the imposition of border restrictions along the so-called Western Balkan route, a number of temporary camps has been created in the mainland in order to increase accommodation capacity. There is no clear referral pathway or official body receiving and coordinating the requests for placement in these camps; these were to a great extent coordinated unofficially by the office of the Minister of Migration Policy until February 2018.<sup>512</sup> The – also unofficial – Central Operational Body for Migration (*Κεντρικό Επιχειρησιακό Όργανο Μετανάστευσης*, ΚΕΠΟΜ) which used to operate under the Ministry of Migration Policy in 2016 has ceased operations since mid-2017.

As regards the temporary camps:

1. Their legal status remains unclear and different administrative authorities are responsible for their operation in practice.<sup>513</sup> The only three facilities officially established on the mainland are **Elaionas**,<sup>514</sup> **Schisto** and **Diavata**,<sup>515</sup>
2. The vast majority of sites on the mainland operate without official site management;<sup>516</sup>
3. Conditions are not suitable for long-term accommodation. Throughout 2017 a number of temporary camps have been closed down, including **Elliniko** in Athens and **Softex** in Northern Greece which had been highly criticised due to unsuitable conditions. However, more than a year and a half since people became stranded on the mainland, several of these camps are still in use;<sup>517</sup>

<sup>511</sup> Information provided by EKKA, 26 February 2018.

<sup>512</sup> Information provided by EKKA, 26 February 2018.

<sup>513</sup> Parliamentary Assembly of the Council of Europe, *Refugees at risk in Greece*, Doc. 14082, 7 June 2016, available at: <http://bit.ly/2m9oryB>.

<sup>514</sup> JMD 3/5262, “Establishment of the Open Facility for the hospitality of asylum seekers and persons belonging to vulnerable groups in Eleonas Attica Region”, 18 September 2015, Gov. Gazette B2065/18.09.2015; JMD 3.2/6008 “Establishment of the Open Facility for the temporary reception of applicant of international protection”, 18 September 2015, Gov. Gazette B’ 1940/6.06.2017.

<sup>515</sup> JMD 3/14762, “Establishment of Open Facilities for the Temporary Hospitality of applicant for international protection”, Gov. Gazette B’ 3720/16.11.2016.

<sup>516</sup> ActionAid et al., *Transitioning to a government-run refugee and migrant response in Greece*, December 2017, available at: <http://bit.ly/2DsdwCC>, 13.

<sup>517</sup> *Ibid.*



4. There are no available data on these accommodation places. No official statistics have been published since August 2017, while disparities are reported between the data provided by authorities and site management support agents.<sup>518</sup>

According to the latest data published by the Coordination Body for the Management of the Refugee Crisis (*Συντονιστικό Όργανο Διαχείρισης Προσφυγικής Κρίσης*), as of 1 August 2017, a total 14,281 persons were accommodated in these sites, which counted a total a nominal capacity of 30,746 places. More precisely:

Temporary accommodation centres per region: 1 August 2017		
Temporary accommodation centre	Nominal capacity	“Guests” at 1 Aug 2017
<b>Northern Greece</b>	<b>14,870</b>	<b>3,187</b>
Polykastro (Nea Kavala)	4,200	418
Serres (Former KEGE)	600	343
Pieria (Iraklis Farm)	200	14
Veroia Imathias (Armatolou Kokkinou Camp)	400	204
Alexandria Imathias (Pelagou Camp)	1,200	274
Diavata (Anagnostopoulou Camp)	2,500	372
Thessaloniki (Derveni-Alexil)	850	188
Thessaloniki (Sindos-Frakapor)	600	53
Thessaloniki (Kordelio-Softex) – now closed	1,900	296
Thessaloniki (Sinatex-Kavalari)	500	114
Thessaloniki (Derveni-Dion Avete)	400	0
Drama (Industrial zone)	550	148
Kavala (Perigiali)	270	345
Konitsa (Municipality)	200	83
Ioannina (Doliana)	400	83
Preveza-Filippiada (Petropoulaki Camp)	700	165
Lagadikia	-	157
<b>Central Greece</b>	<b>4,910</b>	<b>3,399</b>
Larrisa-Koutsohero (Efthimiopoulou Camp)	1,500	1,096
Volos (Magnesia Prefecture)	200	109
Trikala (Atlantik)	360	166
Oinofyta, Voiotia	600	600
Ritsona, Evoia (A.F. Camp)	1,000	712
Thiva (Former Sagioglou Textile Factory)	750	356
Thermopyles-Fthiotida	500	360
<b>Southern Greece</b>	<b>300</b>	<b>146</b>
Andravida (Municipality)	300	146
<b>Attica</b>	<b>10,666</b>	<b>7,549</b>
Elaionas	2,500	2,038
Schisto	2,000	715

<sup>518</sup> *Ibid.*



Skaramangas	3,200	3,101
Elefsina (Merchant Marine Academy)	346	261
Malakasa	1,500	700
Rafina	120	91
Lavrio (Hosting area for asylum seekers)	600	373
Lavrio (Ministry of Agriculture Summer Camp)	400	270
<b>Grand total</b>	<b>30,786</b>	<b>14,281</b>

Source: Coordination Body for the Management of the Refugee Crisis, *Summary statement of refugee flows*, 1 August 2017: <http://bit.ly/2CmmEd1>. The term “guest” is used in the summary statement.

In May 2017, the Ministry of Migration Policy had announced that the number of camps would be reduced from 44 to 22 by the end of 2017 and beginning of 2018.<sup>519</sup> There were 32 camps still operating as of 1 August 2017. No updated data are available.

### 1.3. UNHCR accommodation scheme

UNHCR started implementing an accommodation scheme dedicated to relocation candidates (“Accommodation for Relocation”) through its own funds in November 2015.<sup>520</sup> Following a Delegation Agreement signed between the European Commission and UNHCR in December 2015,<sup>521</sup> the project was continued and UNHCR committed to gradually establishing 20,000 places in open accommodation, funded by the European Commission and primarily dedicated to applicants for international protection eligible for relocation.

The scheme remained in place throughout 2017. In July 2017, as announced by the European Commission, the accommodation scheme was included in the Emergency Support To Integration and Accommodation (ESTIA) programme funded by DG ECHO, aiming to provide urban accommodation and cash assistance, aiming at hosting up to 30,000 people by the end of 2017. As stated by the UNHCR Representative in Greece in February 2018, the European Commission has provided assurances that funding for the accommodation programme of asylum seekers in apartments will also continue in 2019, probably by DG HOME.<sup>522</sup>

At the end of December 2017, the accommodation scheme was implemented by 15 partners, including seven NGOs and eight municipalities.<sup>523</sup>

UNHCR accommodation scheme: 28 December 2017	
Type of accommodation	Capacity
Total number of places in Greece	22,595
Actual capacity	18,898
Current population	17,995
Occupancy rate	95.2%

<sup>519</sup> Thestival, ‘Σε Διαβατά και Λαγκαδίκια τα μόνα κέντρα φιλοξενίας προσφύγων που θα λειτουργήσουν στη Θεσσαλονίκη’, 25 May 2017, available in Greek at: <http://bit.ly/2sH4SS8>.

<sup>520</sup> UNHCR, *Greece: Accommodation for Relocation Project Factsheet*, 1 July 2016, available at: <http://bit.ly/2lNOmLG>.

<sup>521</sup> European Commission, ‘European Commission and UNHCR launch scheme to provide 20,000 reception places for asylum seekers in Greece’, IP/15/6316, 14 December 2015.

<sup>522</sup> UNHCR, ‘Interview with UNHCR Representative in Greece on housing programme for asylum-seekers’, 19 February 2018, available at: <http://bit.ly/2sJf6lh>.

<sup>523</sup> UNHCR, *Greece accommodation update*, December 2017, available at: <http://bit.ly/2sHJ74K>.

Source: UNHCR, Weekly accommodation update, 28 December 2017: <http://bit.ly/2EVNkXw>.

Out of a total of 22,595 places as of 28 December 2017, 1,212 places were located on the islands.

Since November 2015, 40,867 individuals have benefitted from the UNHCR accommodation scheme. The programme had created 21,435 places in 3,577 separate facilities spread across 21 cities in Greece by the end of 2017. Over 80% of accommodation units are apartments, followed by buildings (10%) and hotels (2%).<sup>524</sup>

The vast majority of accommodated persons are families with an average size of four people. One in four residents has at least one vulnerability factor making him or her eligible for accommodation under the scheme: serious medical conditions (9%); single parent or caregiver with minor children (5%); woman at risk, including pregnant woman or new mother (4%). The vast majority, 89%, of people in the scheme are Syrian, Afghan, Iraqi, Palestinian or Iranian.<sup>525</sup>

#### 1.4. The islands and accommodation in the hotspots

Immediately after the launch of the EU-Turkey Statement on 20 March 2016, Reception and Identification Centres (RIC), the so-called “hotspot” facilities, have been transformed into closed detention facilities due to a practice of blanket detention of all newly arrived persons.<sup>526</sup> Following criticism by national and international organisations and actors, as well as due to the limited capacity to maintain and run closed facilities on the islands with a large population,<sup>527</sup> this practice has largely been abandoned. As a result, RIC on the islands are used mainly as open reception centres.

However, it should be mentioned that people residing in the RIC are subject to a “geographical restriction” as they are under an obligation not to leave the island and to reside in the RIC facility (see [Freedom of Movement](#)). Beyond the hotspots, each island has a number of facilities, most of which are run by NGOs for the temporary accommodation of vulnerable groups, such as families, people with health conditions and unaccompanied children.

As of 31 January 2018, a total 12,609 newly arrived remained on the Eastern Aegean islands, of which 301 detained. The nominal capacity of reception facilities, including RIC and other facilities, was at 7,876 places. The nominal capacity of the RIC facilities (hotspots) was of 6,246 while 9,902 were residing there, under a geographical restriction.

More precisely, the figures reported by the National Coordination Centre for Border Control, Immigration and Asylum are as follows:

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<sup>524</sup> *Ibid.*

<sup>525</sup> *Ibid.*

<sup>526</sup> AIDA, Country Report Greece, 2016 Update, March 2017, 100 et seq.

<sup>527</sup> UNHCR, *Explanatory Memorandum to UNHCR's Submission to the Committee of Ministers of the Council of Europe on developments in the management of asylum and reception in Greece*, May 2017, 10.

Accommodation on the Eastern Aegean islands: 31 January 2018								
Island	RIC		UNHCR scheme		EKKA		Other facilities	
	Nominal capacity	Occupancy	Nominal capacity	Occupancy	Nominal capacity	Occupancy	Nominal capacity	Occupancy
Lesvos	3,00	4,952	534	447	180	129	:	1,125
Chios	894	1,380	251	231	18	15	-	-
Samos	700	2,383	170	125	16	16	-	-
Leros	880	569	116	87	-	-	120	59
Kos	772	618	130	98	-	-	-	-
Others	-	-	95	74	-	-	-	-
<b>Total</b>	<b>6,246</b>	<b>9,902</b>	<b>1,296</b>	<b>1,062</b>	<b>214</b>	<b>160</b>	<b>120</b>	<b>1,184</b>

Source: National Coordination Centre for Border Control, Immigration and Asylum, *Situation as of 31 January 2018*: <http://bit.ly/2GDox7X>. The term “other facilities” is used without further clarifications, while the nominal capacity of some facilities is not mentioned.

## 2. Conditions in reception facilities

### Indicators: Conditions in Reception Facilities

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places?  Yes  No
2. What is the average length of stay of asylum seekers in the reception centres? Varies
3. Are unaccompanied children ever accommodated with adults in practice?  Yes  No

Under PD 220/2007, reception conditions should provide to asylum applicants “a standard of living which guarantee their health, covering living expenses and protecting their fundamental rights.”<sup>528</sup> Article 17(2) of the recast Reception Conditions Directive requires states to “ensure that material reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health.” Article 28(1) also requires states to “put in place relevant mechanisms in order to ensure that appropriate guidance, monitoring and control of the level of reception conditions”.

As stated in a recent report of the European Union Agency for Fundamental Rights (FRA), no designated body is in place to oversee reception conditions, and no possibility to lodge a complaint against conditions in reception facilities exists in Greece.<sup>529</sup>

### 2.1. Conditions in temporary accommodation facilities

Over a year and a half since their establishment to address urgent reception needs on the mainland following the imposition of border restrictions, several temporary accommodation centres are still in use, despite the fact that they have been created as temporary sites and are not suitable for long-term accommodation.<sup>530</sup> It should be recalled that “camps can have significant negative impacts over the longer term for all concerned. Living in camps can engender dependency and weaken the ability of refugees to manage their own lives, which perpetuates the trauma of displacement and creates barriers

<sup>528</sup> Article 12(1) PD 220/2007.

<sup>529</sup> FRA, *Current migration situation in the EU: Oversight of reception facilities*, September 2017, available at: <http://bit.ly/2xObtYA>, 2.

<sup>530</sup> ActionAid et al., *Transitioning to a government-run refugee and migrant response in Greece*, December 2017, 13.

to solutions, whatever form they take... In some contexts, camps may increase critical protection risks, including sexual and gender-based violence (SGBV) and child protection concerns.”<sup>531</sup>

Even though in 2017 a number of camps in critical condition have been closed down, conditions in a number of camps are still reported as “poor” as of January 2018,<sup>532</sup> while compliance with recast Reception Conditions Directive standards should be assessed.

Accommodation units on each camp vary. These include containers e.g. in **Skaramangas**, **Ritsona** and **Nea Kavala**, small wooden houses in **Lavrio**, or the use of existing buildings and containers in places such as **Thiva**.

The vast majority of the camps are located outside urban areas, remote from services and access to public transport,<sup>533</sup> thereby generating a feeling of exclusion. For example, residents of **Ritsona** have to walk several kilometres to reach the nearest bus station for Athens, which is about an hour away from the camp and among others the competent RAO of the Asylum Service is based. Residents also complain that the bus ticket prices are high. This is also the case for residents of **Thiva** and **Malakasa** camps.

Residents in **Malakasa** also mention that conditions are deteriorating during the winter period due to low temperatures and adverse weather conditions.

Violence incidents, including sexual and gender based violence (SGBV), lack of security in a number of camps, and limitations in appropriate services in order to respond to the needs of the residents, are also reported.<sup>534</sup> A trend analysis found that 35% of the reported SGBV incidents from July 2016 to June 2017 took place on the mainland and 65% on the islands.<sup>535</sup>

Moreover, as discussed in [Types of Accommodation: Temporary Accommodation Centres](#), the legal status of the vast majority of temporary camps remains unclear and there is no clear referral pathway for accommodation in these camps. The vast majority of sites on the mainland operate without official site management. As a result, there is no competent authority for the monitoring or evaluation of these facilities or any competent body in place for oversight.<sup>536</sup> Residents who are not officially registered at the camps due to lack of official management are also deprived of a number of services, including cash assistance (see [Forms and Levels of Material Reception Conditions](#)).

The example of **Skaramagas** camp is illustrative. There is no official camp management since April 2017. Thus, many of the asylum seekers residing in this camp have not been officially registered and no official authority is responsible for the distribution of residents to the containers. Incidents of ‘non-formal’ rent or sale of containers has been reported, while the lack of official registration deprives those persons of a number of services, including participation in the cash assistance scheme.<sup>537</sup>

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<sup>531</sup> UNHCR, *Policy on Alternatives to Camps*, 22 July 2014, UNHCR/HCP/2014/9, available at: <http://bit.ly/1DAf2kz>, 4.

<sup>532</sup> See e.g. UNHCR, *Greece, Fact Sheet*, 1-31 January 2018, available at: <http://bit.ly/2oAeQzB>.

<sup>533</sup> *Ibid.*

<sup>534</sup> UNHCR, *Explanatory Memorandum pertaining to UNHCR’s submission to the Committee of Ministers of the Council of Europe on developments in the management of asylum and reception in Greece*, May 2017, 5.

<sup>535</sup> UNHCR, *Trend analysis of reported SGBV incidents in Greece*, July 2016 to June 2017.

<sup>536</sup> ActionAid et al., *Transitioning to a government-run refugee and migrant response in Greece*, December 2017, 13.

<sup>537</sup> Kinisi Apelaste to Ratsismo, ‘Κέντρο Ημέρας Βαβέλ: Σχετικά με την κατάσταση στην Ανοικτή Δομή Φιλοξενίας Σκαρμαγκά’, 30 December 2017, available in Greek at: <http://bit.ly/2FFyN0c>.

## 2.2. Conditions on the Eastern Aegean islands

The situation on the islands is extremely alarming and it has become obvious that the reception conditions prevailing in particular in the hotspot facilities may reach the level of inhuman or degrading treatment in certain cases.

The imposition of the “geographical restriction” on the islands since the launch of the EU-Turkey Statement has led to a significant overcrowding of the reception facilities on the islands. With the exception of persons exempt from the [Fast-Track Border Procedure](#), asylum seekers are required to remain on the island until the end of the asylum procedure, which has been proven lengthy. In practice, persons identified as vulnerable could leave the islands immediately after the registration of their asylum application. However, as discussed in [Freedom of Movement](#), following a change of practice in May 2017, non-Syrian applicants, even if they have been identified as vulnerable, should remain on the islands up to the point their personal interview has been conducted. This change, coupled with the increase on arrivals, has further exacerbated overcrowding in the facilities on the islands.<sup>538</sup>

As it emerges from official data, severe overcrowding persists in the RIC on the islands. On 31 January 2018, 4,952 persons remained in the hotspot of **Lesvos**, whose nominal capacity is 3,000 places. On **Samos**, 2,383 persons were present, even though the nominal capacity is 700 places. On **Chios**, 1,380 persons remained in the hotspot, whose capacity is 894 places (see [Types of Accommodation: Islands](#)).

Due to overcrowding, many people are sleeping in tents exposed to extreme weather conditions, while food and water supply is reportedly insufficient, sanitation is poor and security highly problematic. A number of videos recently published by international press demonstrate the unacceptable conditions prevailing at the Moria RIC, **Lesvos**.<sup>539</sup> Conditions in the RIC of **Samos** are illustrated in a video recently published by UNHCR.<sup>540</sup>

Meanwhile, by the end of 2017, the investigation into the death of three men who died in January 2017 within one week had not been concluded. The deaths were suspected to be linked to carbon monoxide poisoning from makeshift heating devices that refugees have been using to warm their freezing tents.<sup>541</sup>

The prolonged stay of the newcomers under at the very least substandard conditions results in great tensions among the various groups that are trapped for months, some of them exceeding the year, on the islands without any an even timeframe regarding their future prospects. This tension leads to violence which underestimates security and safety of persons remaining at the hotspots.<sup>542</sup> At the same time police violence is also reported. For example, as found by a MSF survey on **Samos**, close to a quarter (23.1%) of people surveyed had experienced violence in Greece. Half of those cases of violence were described as beatings, 45% of which had been committed by the police or army.<sup>543</sup>

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<sup>538</sup> MSF, *A dramatic deterioration for asylum seekers on Lesvos*, July 2017, available at: <http://bit.ly/2vCJzAF>, 3.

<sup>539</sup> See e.g. Al Jazeera, ‘Rare look at life inside Lesbos’ Moria refugee camp’, 19 January 2018, available at: <http://bit.ly/2HQzleG>; Sky News, ‘The refugee families living among filth and faeces in camp in Greece’, 20 December 2017, available at: <http://bit.ly/2kNYmSt>; Deutsche Welle, ‘Refugees living in dire conditions on Lesbos’, 18 December 2017, available at: <http://bit.ly/2zfxTm3>.

<sup>540</sup> UNHCR, ‘Syrian family transfers to mainland after Samos ordeal’, 8 March 2018, available at: <https://bit.ly/2uqrWWc>.

<sup>541</sup> Amnesty International, *Report 2017/2018*, available at: <http://bit.ly/2Cd5aEu>, 178.

<sup>542</sup> For example, in December 2017, following a fight in the RIC of Lesbos, 15 persons have been transferred injured to the hospital. One of them was badly injured with a knife on the chest; see Huffington Post, ‘Νύχτα έντασης στη Μόρια. Συγκρούσεις, ΜΑΤ, φωτιές και τραυματίες’, 20 December 2017, available in Greek at: <http://bit.ly/2F0enhe>.

<sup>543</sup> MSF, ‘Greece: EU border policies fuel mental health crisis for asylum seekers’, October 2017, available at: <http://bit.ly/2FUr5z4>, 6.

Conditions are also reported to aggravate the mental health of the population on the islands, many of whom having lived through extreme violence and traumatic events, while the provision of medical services remains critical. For example, in July 2017, 40% of people arriving on the Greek islands were children, and more than half came from Syria. As explained by MSF psychologists both on **Samos** and **Lesvos** the newly arrived families from Iraq and Syria coming from newly freed areas were particularly traumatised and vulnerable. Patients on the islands can wait three to six months for appointments with the psychiatrist, while in August 2017 the hospital on **Lesvos** stopped taking new appointments for the psychiatrist altogether.<sup>544</sup> Extreme distress and emotional pain have also led to a number of reported suicide attempts and self-harm incidents, including of young children.<sup>545</sup>

Greek courts have found that the conditions on the islands directly affect the person's integrity and health. In February 2017, in a case supported by GCR, the Misdemeanour Court of Thessaloniki ruled that the accused persons who had left **Leros** in violation of their geographical restriction should be acquitted. According to the court, their act to leave Leros and consequently to violate the geographic restriction was committed in order to safeguard their personal health and integrity and thus the conditions of a state of emergency pursuant to Article 25 of the Criminal Code were met.<sup>546</sup>

Likewise, in February 2018, in a case also supported by GCR concerning an infringement of the geographical restriction on **Lesvos** and the obligation to reside in the RIC of Moria, the Administrative Court of Piraeus ruled that the infringement of the geographical restriction was due to a threat against the physical integrity of the applicant given the conditions prevailing at the time of his stay in the hotspot.<sup>547</sup>

The conditions prevailing on the Greek islands have also been sharply criticised by a significant number of human rights bodies, international organisations and NGOs, as mentioned below.

In September 2017, UNHCR urged for action to ease conditions on Greek islands:

“UNHCR, the UN Refugee Agency, is concerned by the deteriorating situation on Greece's eastern Aegean islands. The number of new arrivals, which accelerated in August, is putting pressure on overcrowded reception facilities and hampering efforts to improve conditions... Many of the people have been staying on the islands for months and the conditions have affected their physical and mental health. The threat of violence, self-harm and sexual assault is extremely worrying and more security is needed.

The situation is most critical in **Samos**. Despite the recent transfer of some 640 people to the mainland from the island, more than 1,900 people remain crammed into an area meant for 700 at the Reception and Identification Centre (RIC) in Vathy. Among them there are more than 600 children as well as pregnant women, serious medical cases and people with disabilities. We are concerned at the growing risks to their health and welfare, due to water shortages and poor hygienic conditions...

On **Lesvos**, tension remains high at the Moria RIC, which has been twice rocked by riots in recent weeks in protest at the slow pace of registration and asylum processing for certain nationalities, as well as the crowded conditions”.<sup>548</sup>

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<sup>544</sup> *Ibid.*

<sup>545</sup> Reuters, 'At least 11 asylum seekers injured in clashes on Lesbos, MSF says', 15 March 2018, available at: <http://reut.rs/2FYZdN3>; Human Rights Watch, 'Asylum Seekers' Hell in a Greek Hotspot', 30 November 2017, available at: <http://bit.ly/2pdQig4>; Euronews, 'Children trapped in "endless misery" at Greek refugee camps – report', 16 March 2017, available at: <http://bit.ly/2Gv9YEz>.

<sup>546</sup> Misdemeanour Court of Thessaloniki, Decision 2627/2017.

<sup>547</sup> Administrative Court of Piraeus, Decision AP94/22.

<sup>548</sup> UNHCR, 'UNHCR urges action to ease conditions on Greek islands', 8 September 2017, available at: <http://bit.ly/2FSMxEM>.



In October 2017, UNHCR called for accelerated winter preparations on the Aegean islands:

“The pressure on overcrowded sites on the islands continued in September with nearly 5,000 new arrivals, resulting in hundreds of children, women and men having to sleep in small tents and shelter unsuitable for the winter. Sea arrivals to Greece this year have reached 20,000 and the majority were Syrian or Iraqi. Over half arrived since July and most were comprised of family or other vulnerable groups. The recent rise in arrivals has further strained Greece’s hosting capacity on the islands.

In **Samos**’ Vathy hotspot, more than 1,200 people are staying in inadequate shelter, a third of them camping in very difficult conditions. Another 300, including families and unaccompanied children, are sleeping in small tents in the woods outside the reception centre, due to the lack of space and adequate services inside... In Moria hotspot on **Lesvos**, more than 1,500 people are in makeshift shelters or tents without insulation, flooring or a heating unit. Many are families, pregnant women, people with disabilities, and very young children... Overcrowding and poor conditions are also observed on **Chios** Island, while concerns are growing on **Leros** and **Kos** as sea arrivals continue”.<sup>549</sup>

On 1 December 2017, 12 NGOs launched a campaign in order to end the containment policy on the islands:

“As of November 30, the hotspots on **Lesvos**, **Chios**, **Samos**, **Leros**, and **Kos** are almost 7,200 over capacity: 12,744 people in facilities with a capacity of just 5,576. Thousands, including single women, female heads of households, and very young children, live in summer tents, essentially sleeping on the ground, exposed to the cold, damp, and rain as the weather worsens. Some women are forced to share tents and containers with unrelated men, putting their privacy and safety at risk. There is lack of access to clean water, sanitation facilities and health services”.<sup>550</sup>

On 22 December 2017, UNHCR stated that the situation on the islands was still grim despite an acceleration of transfers to the mainland:

“Since mid-October, some 6,000 asylum seekers have been moved by the Greek government out of the islands with UNHCR’s support. This is among efforts being taken to ease conditions in overcrowded reception centres, and transfer the more vulnerable to safety as winter sets in.

However, some 10,000 asylum seekers are still crammed into government-run facilities on the islands, double the design capacity... [T]he current restrictions which keep people on the islands needs to be reviewed to allow for the quick transfer from Reception and Identification Centres (RICs) of vulnerable asylum seekers and others who could continue the asylum procedure on the mainland. Tension in the RICs and on the islands has been mounting since the summer when the number of arrivals began rising”.<sup>551</sup>

On the same day the National Commission for Human Rights pointed out:

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<sup>549</sup> UNHCR, ‘UNHCR calls for accelerated winter preparations on Greek Aegean islands’, 6 October 2017, available at: <http://bit.ly/2yt4ZjO>.

<sup>550</sup> Amnesty International et al., ‘Greece: Move Asylum Seekers to Safety Before Winter Hits’, 1 December 2017, available at: <http://bit.ly/2COcEJG>.

<sup>551</sup> UNHCR, ‘Situation on Greek islands still grim despite speeded transfers’, 22 December 2017, available at: <http://bit.ly/2H1syDh>.



“[T]he need to re-examine the policy of geographical limitation on the East Aegean islands, which on many occasions takes place without the appropriate rule of law guarantees” and recommended to the Greek Authorities “given the current conditions [on the islands], it is necessary to eliminate the entrapment of applicants for international protection in the Greek islands”.<sup>552</sup>

On 9 February 2018, UNHCR stated that due to tensions and overcrowding at reception facilities on Greek islands, refugee women and children are facing heightened risk of sexual violence:

“UNHCR, the UN Refugee Agency, is very concerned by reports from asylum seekers of sexual harassment and violence in sub-standard reception centres on the Greek islands, despite welcomed Government measures to address overcrowding and dire living conditions.

In 2017, UNHCR received reports from 622 survivors of sexual and gender-based violence (SGBV) on the Greek Aegean islands, out of which at least 28 per cent experienced SGBV after arriving in Greece... The situation is particularly worrying in the Reception and Identification Centres (RIC) of Moria (**Lesvos**) and Vathy (**Samos**), where thousands of refugees continue to stay in unsuitable shelter with inadequate security. Some 5,500 people are in these centres, which is double their intended capacity.

Reports of sexual harassment in Moria are particularly high. In these two centres, bathrooms and latrines are no-go zones after dark for women or children, unless they are accompanied. Even bathing during day time can be dangerous. In Moria, one woman told our teams that she had not taken a shower in two months from fear... The actual number of incidents is therefore likely to be much higher than reported...

Insecurity is another problem. Although there are police patrols, these remain insufficient, particularly at night, and don't cover extended areas adjacent to the RICs, where people stay in tents without any security presence. Conditions are also building frustration among people, leading to a difficult and tense security environment, further raising the risk of SGBV”.<sup>553</sup>

### 2.3. Destitution

Destitution and homelessness still remain matters of concern, despite the efforts made in order to increase reception capacity in Greece (see [Types of Accommodation](#)). As mentioned above, living conditions on the Eastern Aegean islands do not meet the minimum standards of the recast Reception Conditions Directive and thus asylum seekers living in such conditions are exposed to deplorable conditions, without access to decent housing or basic services.

On the mainland, as it comes from the EKKKA statistical data only 35.2% of the applicants who have requested accommodation have ultimately been accepted in a place. The rate for single adults without any identified vulnerability is significantly lower (10.7%). Bearing in mind that these persons are not be eligible for the UNHCR accommodation scheme, and that there is no clear referral pathway in order to access temporary accommodation facilities which are often isolated, homelessness is a serious risk in their case. Even accommodation in the temporary camps does not exclude the risk of destitution given the poor conditions and lack of official management prevailing in many of these sites.

Persons identified as vulnerable also face destitution risks. Only one out of three unaccompanied children are accommodated in an EKKKA shelter, while only 48% of single-parent families and 18% of

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<sup>552</sup> NCHR, *Report on the condition of Reception and Asylum system in Greece*, 22 December 2017, available at: <http://bit.ly/2nkf1PO>.

<sup>553</sup> UNHCR, 'Refugee women and children face heightened risk of sexual violence amid tensions and overcrowding at reception facilities on Greek islands', 9 February 2018, available at: <http://bit.ly/2F97IEG>.

families requesting accommodation were accepted in a place. Given the high occupancy rate of the UNHCR scheme places (90.5% on 28 November 2017, 95.2% on 28 December 2017, 95.3% on 30 January 2018 and 97% on 27 February 2018)<sup>554</sup> and the length of the asylum procedure, including the Dublin procedure, the possibility for newly arriving vulnerable families and persons to benefit from accommodation under that scheme should be further monitored.

In any event, in order for the Greek authorities' compliance with their obligations relating to reception conditions to be assessed, the number of available reception places that are in line with the standards of the recast Reception Conditions Directive should be assessed against a total number of 44,181 asylum seekers whose applications were pending in first and second instance by the end of 2017.<sup>555</sup>

## 2.4. Racist violence

Despite the solidarity with refugees generally exhibited by local communities, incidents of racist violence and tension have been recorded through 2017.<sup>556</sup>

On **Chios**, in April 2017, following a demonstration in front of the town hall, persons with links to far rights groups attacked the Souda camp with rocks. Three persons have reportedly been injured by the attack,<sup>557</sup> while two persons have been arrested and identified by the refugees as perpetrators.<sup>558</sup> Attacks on refugee children by persons alleged to have links with far-right groups have also been reported in June 2017.<sup>559</sup>

On **Leros**, attacks on refugees have been reported in May 2017. According to the Racist Violence Recording Network (RVRN):

“Six (6) distinct attacks were perpetrated between midnight of May 2<sup>nd</sup> and the evening of May 4<sup>th</sup>. Three (3) incidents took place within a short period of time and targeted groups of persons on their way to the Reception and Identification Center (RIC), at Lepida. In the majority of the incidents, the victims report that they were attacked by motorcycled groups of persons using sharp and other objects. In one incident, a pregnant woman declared that she was targeted due to her hijab. In most of the cases, the victims were hospitalised, while the police were notified and some of the victims gave a deposition”.

The RVRN recalled that the *modi* of ambushing victims and attacking in motorcycled groups against small groups of refugees on their way to Lepida was recorded and reflected in its 2016 Annual Report.

On **Lesvos**, attacks against refugees have been recorded in September 2017,<sup>560</sup> as well as November 2017. The later incident concerns attacks by persons with alleged links to far-right groups against

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<sup>554</sup> UNHCR, *Weekly accommodation update*, 28 November 2017, available at: <http://bit.ly/2pdAdry>; 28 December 2017, available at: <http://bit.ly/2EVNkXw>; 30 January 2018, available at: <http://bit.ly/2GtVWD5>; 27 February 2018, available at: <http://bit.ly/2HDt9er>.

<sup>555</sup> This includes 36,340 first instance asylum applications and 7,481 appeals pending as of 31 December 2017: Information provided by the Asylum Service, 15 February 2018; Appeals Authority, 6 February 2018.

<sup>556</sup> A timeline of indicative incidents of hate crimes on the islands in 2016-2017 is made available by Refugee Support Aegean at: <http://bit.ly/2FDXXPI>.

<sup>557</sup> ERT, 'Πέτρες από ακροδεξιούς κατά του καταυλισμού προσφύγων στη Σούδα', 21 April 2017, available in Greek at: <http://bit.ly/2t8Egty>.

<sup>558</sup> Skai, 'Συλλήψεις ακροδεξιών για επιθέσεις κατά προσφύγων', 21 April 2017, available in Greek at: <http://bit.ly/2oA8QaZ>.

<sup>559</sup> The Guardian, 'Abandoned and abused: the forgotten Syrian refugee children in a Greek island detention camp', 17 June 2017, available at: <http://bit.ly/2snl2LS>.

<sup>560</sup> Lesvos News, 'Ρατσιστική επίθεση κατά πρόσφυγα στη Μυτιλήνη', 22 September 2017, available in Greek at: <http://bit.ly/2HVWWJl>.

refugees demonstrating in the city of Lesbos while a journalist was covering the protest.<sup>561</sup> At the end of November, a monument in memoriam of refugees who lost their lives while trying to cross the Aegean Sea was vandalised.<sup>562</sup>

In **Athens**, a racist attack was reported in November 2017 against an apartment hosting a refugee family. Stones were thrown through the window of the apartment of the family, while perpetrators also left a threatening note. The case concerned the family of an 11-year-old refugee who had been selected to stand as a standard-bearer at a students' parade.<sup>563</sup> Meanwhile, in **Aspropirgos**, Attica region, attacks have been repeatedly reported against migrant land workers by persons with alleged links to far-right groups between May and October 2017.<sup>564</sup> In March 2018, an arson attack took place against the Afghan Migrant and Refugee Community Centre in central Athens, while a far-right extremist group claimed responsibility for this racist attack.<sup>565</sup>

According to the 2017 Annual Report of the Racist Violence Recording Network (RVRN), racist violence and hate crime persist in Greece, with more than 100 incidents reported in 2017. In 34 incidents, the victims were migrants or refugees who were allegedly targeted on grounds of ethnic origin, religion, race and/or gender identity. In 7 incidents, the victims were human rights defenders and employees of organisations offering refugee support services. Moreover, the RVRN noted the coexistence of opposing trends in Greek society: on the one hand, groups with xenophobic ideologies and acts of organised violence, and the development of clearer and faster responses by the authorities, on the other.<sup>566</sup>

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<sup>561</sup> ERT, 'Λέσβος: Συγκέντρωση διαμαρτυρίας για το προσφυγικό', 24 November 2017, available in Greek at: <http://bit.ly/2oHMHGW>.

<sup>562</sup> Efsyn, 'Βανδάλισαν μνημείο προσφύγων στη Λέσβο', 29 November 2017, available in Greek at: <http://bit.ly/2F6zHS2>.

<sup>563</sup> UNHCR, 'UNHCR expresses serious concern over racist violence incident against refugee family', 3 November 2017, available at: <http://bit.ly/2GT4EcV>.

<sup>564</sup> Vice, 'Οι Δολοφονικές Επιθέσεις σε Πακιστανούς Εργάτες στον Ασπρόπυργο Συνεχίζονται', 7 October 2017, available in Greek at: <http://bit.ly/2Flz16K>; 'Ρατσιστική Επίθεση σε Βάρος Πακιστανών Μέσα στο Σπίτι τους', 23 August 2017, available in Greek at: <http://bit.ly/2HU5x6B>; 'Η «Κου Κλουξ Κλαν» του Ασπροπύργου Δρα Ανενόχλητη τη Νύχτα', 16 May 2017, available in Greek at: <http://bit.ly/2oGdaVi>.

<sup>565</sup> UNHCR, 'UNHCR condemns attack on Afghan community centre in Athens', 23 March 2018, available at: <https://bit.ly/2l6vcYL>.

<sup>566</sup> RVRN, *2017 Annual Report*, available at: <https://bit.ly/2pQcLQK>.

## C. Employment and education

### 1. Access to the labour market

#### Indicators: Access to the Labour Market

1. Does the law allow for access to the labour market for asylum seekers?  Yes  No  
❖ If yes, when do asylum seekers have access the labour market? Upon lodging
2. Does the law allow access to employment only following a labour market test?  Yes  No
3. Does the law only allow asylum seekers to work in specific sectors?  Yes  No  
❖ If yes, specify which sectors:
4. Does the law limit asylum seekers' employment to a maximum working time?  Yes  No  
❖ If yes, specify the number of days per year
5. Are there restrictions to accessing employment in practice?  Yes  No

According to the law, asylum seekers have access to the labour market as employees or service or work providers from the moment an asylum application has been formally lodged and they have obtained an asylum seeker's card.<sup>567</sup>

Applicants who have not yet completed the full registration and lodged their application i.e. applicants who are pre-registered, do not have access to the labour market. As noted in [Registration](#), the average waiting time between pre-registration via Skype and full registration was 81 days as of December 2017 on the mainland.<sup>568</sup>

Without underestimating the positive development of immediate access of asylum seekers to the labour market since 2016, taking into consideration the current context of financial crisis, the high unemployment rates and further obstacles posed by competition with Greek-speaking employees, it is particularly difficult in practice for asylum seekers to have access to the labour market, which may lead to 'undeclared' employment with severe repercussions on the enjoyment of basic social rights. According to statistics for the third trimester of 2017, the unemployment rate was 20.2%, while higher rates were reported for persons aged 20 to 24 (38.5%) and 25 to 29 (29%)<sup>569</sup>

Moreover, access of asylum seekers to labour market is also hindered in practice by well-documented longstanding obstacles regarding the provision of Tax Registration Number (*Αριθμός Φορολογικού Μητρώου*, AFM) to asylum seekers. As highlighted by a Joint Statement of 25 NGOs in August 2017, despite the fact that asylum seekers meet the necessary legal requirements, they often face problems with tax office officials who refuse to issue AFM. Refusals are based on various excuses in contradiction with the applicable legal framework. Among others, these include: (a) the refusal to accept as a permanent residence the person's accommodation in a reception facility; and (b) an artificial requirement of a written certification by the Asylum Service to confirm the applicant's right to work.<sup>570</sup> On 28 August 2017, the General Secretary of Migration Policy addressed a letter to the competent authorities, giving instructions for a proper implementation of the law. The harmonisation of administrative practice on this issue should be further monitored.

<sup>567</sup> Article 71 L 4375/2016.

<sup>568</sup> Information provided by the Asylum Service, 15 February 2018.

<sup>569</sup> Hellenic Statistical Authority, *Έρευνα εργατικού δυναμικού*, Q3 2017, available in Greek at: <http://bit.ly/2FgJPK>.

<sup>570</sup> SolidarityNow et al. *Joint report of 25 organizations for cases of violation of asylum seekers' rights*, 3 August 2017, available at: <http://bit.ly/2oJxDs9>.

Furthermore, asylum seekers residing in a reception facility could not be registered as unemployed with the Unemployment Office of the Hellenic Manpower Employment Organisation (*Οργανισμός Απασχόλησης Εργατικού Δυναμικού*, OAED) and could not access unemployment benefits due to the fact that they could not provide AFM and/or a Social Security Number (*Αριθμός Μητρώου Κοινωνικής Ασφάλισης*, AMKA),<sup>571</sup> or a house contact.<sup>572</sup> On 28 February 2018, following a decision of OAED, the possibility to provide a certification from the reception facility has been added for asylum seekers willing to register themselves at the OAED registry.<sup>573</sup>

As regards vocational training, Article 11 PD 220/2007 provides that applicants can have access to vocational training programmes implemented by public or private bodies, under the same conditions and prerequisites as foreseen for Greek citizens. However, the condition of enrolment “under the same conditions and prerequisites as foreseen for Greek citizens” does not take into consideration the significantly different position of asylum seekers, and in particular the fact that they may not be in the position to provide the necessary documentation.<sup>574</sup>

## 2. Access to education

### Indicators: Access to Education

- |  |   |
|--|---|
| 1. Does the law provide for access to education for asylum-seeking children? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. Are children able to access education in practice?                        | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

According to Article 9 PD 220/2007, the minor children of applicants and children seeking international protection have access to the education system under similar conditions as Greek nationals, as long as there is no pending enforceable removal measure against them or their parents.<sup>575</sup> Access to secondary education shall not be withheld for the sole reason that the child has reached the age of maturity.<sup>576</sup>

Children of citizens of a third country can enrol at public schools with incomplete documentation if they:

- (a) are granted refugee status by the Greek state;
- (b) come from regions where the situation is turbulent (*έκρυθμη*);
- (c) have filed an asylum claim; and
- (d) are third-country nationals residing in Greece, even if their legal residence has not been settled yet.<sup>577</sup>

Registration may not take longer than 3 months, for 1 year where special language training is provided to facilitate access to the education system.<sup>578</sup>

A Ministerial Decision issued in August 2016 established a programme of afternoon preparatory classes (*Δομές Υποδοχής και Εκπαίδευσης Προσφύγων*, DYEP) for all school-age children aged 4 to 15.<sup>579</sup> The programme is implemented in public schools neighbouring camps or places of residence.

Children aged between 6-15 years, living in dispersed urban settings (such as relocation accommodation, squats, apartments, hotels, and reception centres for asylum seekers and

<sup>571</sup> *Ibid.*

<sup>572</sup> OAED, ‘Σχετικά με την έκδοση κάρτας ανεργίας σε έγκυες και σε αιτούντες πολιτικό άσυλο’, No 51777, 13 July 2017, available in Greek at: <http://bit.ly/2D3BiXb>.

<sup>573</sup> OAED, ‘Δυνατότητα εγγραφής στο Μητρώο του ΟΑΕΔ, ανέργων χωρίς μόνιμη κατοικία’, 28 February 2018, available in Greek at: <http://bit.ly/2CU9WCK>.

<sup>574</sup> GCR, *Observations on the Draft Law transposing the Reception Directive*, 31 October 2016, available in Greek at: <https://goo.gl/MBRqno>.

<sup>575</sup> Article 9(1) PD 220/2007.

<sup>576</sup> Article 9(3) PD 220/2007.

<sup>577</sup> Article 21(8) L 4251/2014 (Immigration Code).

<sup>578</sup> Article 9(2) PD 220/2007.

<sup>579</sup> Ministerial Decision 152360/ΓΔ4/2016, GG 3049/B/23-09-2016, available at: <http://bit.ly/2IbVkGP>.

unaccompanied children), may go to schools near their place of residence, to enrol in the morning classes alongside Greek children, in schools that will be identified by the Ministry. This is done with the aim of ensuring balanced distribution of children across selected schools, as well as across preparatory classes for migrant and refugee children where Greek is taught as a second language.<sup>580</sup>

Although the refugee education programme implemented by the Ministry of Education is highly welcome, the school attendance rate should be reinforced, while special action should be taken in order for children remaining on the islands to be guaranteed access to education.

A research study conducted by the Greece Education Sector Working Group (ESWG) in February and March 2017 on children's access and participation rates in informal and formal education classes, as well as school attendance rates for children living in a selected sample of apartments, hotels, and shelters for unaccompanied and separated children, indicated 58% of assessed children to be attending education activities, including formal, non-formal and informal education, administered in the assessed locations or nearby, while 41% did not attend any type of education. Among the children attending any type of education activities, only 22% were attending formal education.<sup>581</sup>

As reported by the study, the main reasons for which children do not attend Greek public schools include language barriers and the fact that lessons are not perceived as beneficial – because children were awaiting transfer to another EU country or because lessons were not adapted to children's skill level.<sup>582</sup>

In an assessment made between April and May 2017 with the aim of examining access to school for unaccompanied children accommodated in shelters with the support of the members of the Children on the Move Network, among the total number of accommodated children surveyed, a percentage of 44% were enrolled in schools, while 56% were not enrolled in schools. The assessment included 29 shelters, 11 transit and 18 long-term, hosting 604 unaccompanied children.<sup>583</sup>

These findings are corroborated by the overall number of children estimated to attend any level of formal education. In total, during the school year 2017-2018 the number of children estimated to attend all levels of formal education is about 6,500 to 7,000 while a number of about 20,000 asylum-seeking and refugee children are currently in Greece, representing about 40% of the total refugee population. Of these children 35% are below the age of four, 39% between five and eleven, and 26% between twelve and seventeen.<sup>584</sup>

More particularly, a significant gap in education persists for children remaining on the islands. While 37.5% of the 29,718 people arriving on the islands in 2017 were children,<sup>585</sup> only 300 children on the islands were reported to have been enrolled at public schools at the end of October 2017.<sup>586</sup> By February 2018, there were no afternoon preparatory classes (DYEP) operating in the **Northern Aegean**.<sup>587</sup>

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<sup>580</sup> Ministry of Education, *Q&A for access to education for refugee children*, 1 February 2017, available at: <http://bit.ly/2malzAv>.

<sup>581</sup> UNICEF and REACH, *Access to education of refugee and migrant children outside accommodation (open sites Athens and Thessaloniki, Greece*, March 2017, available at: <http://bit.ly/2HXaRWH>.

<sup>582</sup> *Ibid.*

<sup>583</sup> Children on the Move Network, *Access to formal education for unaccompanied children in shelters*, 2017, available at: <http://bit.ly/2tbvo6n>.

<sup>584</sup> Refugee Support Aegean, 'Majority of refugee children in the Aegean Islands Hot Spots are excluded from education', 18 February 2018, available at: <http://bit.ly/2oD3FHj>.

<sup>585</sup> UNHCR, *Greece – Sea arrivals dashboard*, December 2017, available at: <http://bit.ly/2FmOjQD>.

<sup>586</sup> Children on the Move Network, 'Βασικά στοιχεία για τα παιδιά που μετακινούνται', 31 October 2017, available in Greek at: <http://bit.ly/2FVISXV>; Human Rights Watch, 'Greece: No School for Many Asylum-Seeking Kids', 17 September 2017, available at: <http://bit.ly/2xeXJss>.

<sup>587</sup> Refugee Support Aegean, 'Majority of refugee children in the Aegean Islands Hot Spots are excluded from education', 18 February 2018, available at: <http://bit.ly/2oD3FHj>.



In January 2018, the Ministry of Education together with the Ministry Migration Policy announced a pilot programme of Greek language courses funded by the Asylum, Migration and Integration Fund (AMIF), targeting asylum seekers and beneficiaries of international protection over the age of 15. A group of 2,000 persons between the age of 15 to 18 and a 3,000 persons over 18 would be able to participate in the programme in 2018, as announced.<sup>588</sup>

## D. Health care

### Indicators: Health Care

1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?  
 Yes       No
2. Do asylum seekers have adequate access to health care in practice?  
 Yes       Limited       No
3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?  
 Yes       Limited       No
4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care?  
 Yes       Limited       No

According to national legislation, asylum seekers are entitled free of charge to necessary health, pharmaceutical and hospital care, on condition that they have no health insurance and no financial means. Such health care includes:<sup>589</sup>

- (a) Clinical and medical examinations in public hospitals, health centres or regional medical centres;
- (b) Medication provided on prescription by a medical doctor serving in one of the institutions mentioned in point (a) and acknowledged by their director;
- (c) Hospital assistance in public hospitals, hospitalisation at a class C room.

In all cases, emergency aid shall be provided to applicants free of charge. Applicants who have special needs shall receive special medical assistance.”<sup>590</sup>

A law adopted in 2016 provides free access to public health services for persons without social insurance and vulnerable.<sup>591</sup> Among others, asylum seekers and members of their families are considered as persons belonging to vulnerable groups and entitled to have free access to public health system and pharmaceutical treatment.

In practice, asylum seekers face administrative barriers to access to the health care system, which are linked to the refusal of authorities to issue a Social Security Number (*Αριθμός Μητρώου Κοινωνικής Ασφάλισης*, AMKA).<sup>592</sup> Following a Joint Statement by 25 NGOs in August 2017,<sup>593</sup> a Circular issued on 13 February 2018 clarifies the process of issuance of AMKA to beneficiaries of international protection and asylum seekers.<sup>594</sup> The implementation of the circular remains to be seen.

<sup>588</sup> Ministry of Migration Policy and Ministry of Education, ‘Πρόγραμμα “Μαθήματα Γλώσσας και Πολιτισμού για Πρόσφυγες και Μετανάστες 15+”’, 23 January 2018, available in Greek at: <http://bit.ly/2Fid9SI>.

<sup>589</sup> Article 14 PD 220/2007.

<sup>590</sup> *Ibid.*

<sup>591</sup> Article 33 L 4368/2016.

<sup>592</sup> SolidarityNow, ‘Issues in the issuance of AMKA’, 10 November 2016, available in Greek at: <http://bit.ly/2ltg9Ql>; MSF, *Greece in 2016: Vulnerable People Left Behind*, 20 October 2016, available at: <http://bit.ly/2kPfBG1>.

<sup>593</sup> SolidarityNow et al. *Joint report of 25 organizations for cases of violation of asylum seekers’ rights*, 3 August 2017, available at: <http://bit.ly/2oJxDs9>.

<sup>594</sup> Circular 31547/9662 of 13 February 2018 «Σχετικά με την απόδοση AMKA σε δικαιούχους διεθνούς προστασίας και αιτούντες άσυλο», available in Greek at: <http://bit.ly/2H1ZCuE>.



Moreover, the impact of financial crisis on the health system in Greece,<sup>595</sup> leading to a significant shortage of resources and capacity for both local population and foreigners, as well as the lack of adequate cultural mediators, should also be taken consideration when assessing the access of asylum seekers to health care.

On the **Eastern Aegean islands**, the provision of medical services remains limited. The transfer of responsibilities for health services from NGOs to state actors such as the Ministry of Health and the Centre of Disease Control and Prevention (KEELPNO)<sup>596</sup> in mid-2017, led to a further restriction on access to medical services as well as to out-patient consultations,<sup>597</sup> due to gaps in the provision of services, coupled with a shortage in human resources.<sup>598</sup> The National Health System on the islands, already overstretched by the impact of the long-lasting financial crisis, is not in a position to address the needs. For example, as mentioned by MSF, “as the scale and severity of people’s mental health condition worsen, there is little capacity to respond to these needs, itself contributing to a deterioration of people’s health... Patients on the islands can wait three to six months for appointments with the psychiatrist and in August 2017, the hospital on **Lesvos** stopped taking new appointments for the psychiatrist all together. On **Samos**, severe patients that constitute a risk to others or themselves are kept in the police station’s jail, again without appropriate access to healthcare, and without staff technically equipped to respond to their needs.”<sup>599</sup>

## E. Special reception needs of vulnerable groups

### Indicators: Special Reception Needs

1. Is there an assessment of special reception needs of vulnerable persons in practice?  
 Yes       In some cases       No

Article 17 PD 220/2007 provides that “while applying the provisions... on reception conditions, the competent authorities and local administrations shall take care to provide special treatment to applicants belonging to vulnerable groups such as minors, in particular unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence”. More specific provisions foreseen the framework for minors, unaccompanied minors and victims of torture.<sup>600</sup>

Moreover, under the **Reception and Identification Procedure** upon arrival, the Head of the RIC “shall refer persons belonging to vulnerable groups to the competent social support and protection institution.”<sup>601</sup>

However, shortages in the **Identification** of vulnerabilities, together with a critical lack of reception places on the islands (see **Types of Accommodation**) prevents vulnerable persons from enjoying special reception conditions. This could be also the case on the mainland, due to the limited capacity of facilities under EKKA, the lack of a clear referral pathway to access temporary camps and the poor reception conditions reported in many of those. Moreover, the high occupancy rate of reception places under UNHCR scheme may deprive newly arriving vulnerable families and individuals from access this type of accommodation.

<sup>595</sup> For an overview, see The Guardian, ‘Greece’s public health meltdown’, 1 January 2017, available at: <http://bit.ly/2in3wW8>.

<sup>596</sup> AIDA, *The concept of vulnerability in European asylum procedures*, September 2017, 25.

<sup>597</sup> MSF, *A dramatic deterioration for asylum seekers on Lesvos*, July 2017, 10.

<sup>598</sup> AIDA, ‘Update on the implementation of the hotspots in Greece and Italy’, 23 April 2017, available at: <http://bit.ly/2FKkmqw>.

<sup>599</sup> MSF, *Confronting the mental health emergency on Samos and Lesvos*, October 2017, available at: <http://bit.ly/2FUr5z4>.

<sup>600</sup> Article 18-10 PD 220/2007.

<sup>601</sup> Article 14(8) L 4375/2016.

In particular, as regards the situation on the islands, the change of practice of the Asylum Service in May 2017, following which non-Syrian applicants should remain on the islands up until the point their personal interview has taken place even if they have been identified as vulnerable,<sup>602</sup> entails that vulnerable persons remain in dire conditions on the islands for prolonged periods of up to several months.<sup>603</sup> It should be noted that the average duration of the procedure on the islands, from the moment of pre-registration, was 83 days as of December 2017.<sup>604</sup>

## 1. Reception of unaccompanied children

As mentioned in [Types of Accommodation](#), the EKKA network included a total of 1,101 places, including 783 places in 33 long-term shelters and 318 places in 16 short-term (“transit”) shelters for unaccompanied children in January 2018. This represents a decrease compared to 813 places in 28 long-term shelters and 499 places in 22 short-term shelters as of January 2017:

Long-term shelters for unaccompanied children in the EKKA network				
	Shelter	Operator	Location	Number of Beds
1	Apostoli Athens	Apostoli	Athens	20
2	Arsis Alexandroupoli	Arsis	Alexandroupoli	24
3	Arsis Thessaloniki	Arsis	Thessaloniki	30
4	Arsis Makrinitza	Arsis	Volos	30
5	Arsis Pilaia	Arsis	Thessaloniki	30
6	EES Athens	Hellenic Red Cross	Athens	19
7	EES Volos	Hellenic Red Cross	Volos	30
8	EES Kalavrita	Hellenic Red Cross	Kalavrita	10
9	Iliaktida Kallithea Athens	Iliaktida	Athens	30
10	INEDIBIM Anogia	INEDIVIM	Crete	25
11	MdM Athens	MdM	Athens	30
12	MedIn Victoria	Medical Intervention	Athens	30
13	MedIn (Girls) Athens	Medical Intervention	Athens	15
14	MedIn Metaxourgio	Medical Intervention	Athens	30
15	MedIn Little Prince Athens	Medical Intervention	Athens	12
16	AMKE Melissa Athens	Melissa	Athens	15
17	XENIA TEENS Peireus	Nostos	Athens	18
18	Praksis Egaleo	Praksis	Athens	30
19	Praksis Glifada	Praksis	Athens	24
20	Praksis Thessaloniki	Praksis	Thessaloniki	30
21	Praksis Ilion	Praksis	Athens	30
22	Praksis Kipseli	Praksis	Athens	26
23	Praksis Patisia	Praksis	Athens	20
24	Praksis Patra	Praksis	Patra	30
25	Praksis Penteli	Praksis	Athens	24

<sup>602</sup> MSF, *A dramatic deterioration for asylum seekers on Lesbos*, July 2017, 3.

<sup>603</sup> ActionAid et al., *Transitioning to a government-run refugee and migrant response in Greece*, December 2017, 6.

<sup>604</sup> Information provided by the Asylum Service, 15 February 2018.

26	Praksis Petralona	Praksis	Athens	24
27	Praksis Stegi Plus Athens	Praksis	Athens	30
28	Praksis Tositsa	Praksis	Athens	30
29	Praksis Halandri	Praksis	Athens	22
30	Silogos Merimnis Anilikon Athens	SMA	Athens	17
31	SOS Athens 1	SOS Villages	Athens	13
32	SOS Athens 2	SOS Villages	Athens	25
33	Hamogelo tou Paidiou Kavala	Hamogelo tou Paidiou	Kavala	10
<b>Total</b>				<b>783</b>

Source: EKKA, 18 January 2018.

<b>Short-term (“transit”) shelters for unaccompanied children in the EKKA network</b>				
	<b>Shelter</b>	<b>Operator</b>	<b>Location</b>	<b>Number of Beds</b>
1	Mdf Arsis Athens	Arsis	Athens	28
2	Mdf Arsis Alexandroupoli	Arsis	Alexandroupoli	24
3	Mdf Arsis Thessaloniki	Arsis	Thessaloniki	30
4	Mdf Faros Athens	Faros	Athens	22
5	Iliaktida 8is Noembriou Lesvos	Iliaktida	Lesvos	22
6	Hliaktida Alisida Lesvos	Iliaktida	Lesvos	20
7	Iliaktida Vostani Lesvos	Iliaktida	Lesvos	28
8	Hliaktida Karantoni Lesvos	Iliaktida	Lesvos	16
9	Hliaktida (girls) Lesvos	Iliaktida	Lesvos	17
10	Hliaktida Limanaki Lesvos	Iliaktida	Lesvos	30
11	Hliaktida Loutra Lesvos	Iliaktida	Lesvos	9
12	Hliaktida Naumahou Lesvos	Iliaktida	Lesvos	16
13	Hliaktida Filikon Lesvos	Iliaktida	Lesvos	12
14	Mdf Metadrasi Athens	Metadrasi	Athens	12
15	Mdf Metadrasi Samos	Metadrasi	Samos	14
16	Mdf Metadrasi Chios	Metadrasi	Chios	18
<b>Total</b>				<b>318</b>

Source: EKKA, 18 January 2018.

As of 31 January 2018, the estimated number of unaccompanied children in Greece was 3,270. Of those, 2,312 were on a waiting list for a shelter. 269 of children on the waiting list remained were in closed facilities (RIC) and police stations under “protective custody” (see [Detention of Vulnerable Applicants](#)).<sup>605</sup> As stated by the UNHCR “[o]nly one third of the unaccompanied children in Greece can be accommodated in shelters, as the 3,270 unaccompanied children by far exceed the 1,100 available places... As a result, children risk spending extended periods in the reception and identification centres (RICs) and in protective custody”.<sup>606</sup>

<sup>605</sup> EKKA, *Situation Update: Unaccompanied Children (UAC) in Greece*, 31 January 2018, available at: <http://bit.ly/2C4D3Ta>.

<sup>606</sup> UNHCR, *Fact Sheet, Greece*, 1-31 January 2018, available at: <http://bit.ly/2oAeQzB>.

In this context, it should be noted that the United Nations Human Rights Committee found in November 2017 that a potential deportation of an unaccompanied Syrian asylum-seeking child from Denmark to Greece would violate Articles 7 and 24 of the International Covenant on Civil and Political Rights, taking into account *inter alia* the conditions of reception of migrant minors in Greece.<sup>607</sup>

## F. Information for asylum seekers and access to reception centres

### 1. Provision of information on reception

According to Article 3 PD 220/2007, the authorities competent to receive and examine an application for asylum must inform the applicant immediately and in any case within 15 calendar days, providing them with informative material on reception conditions in a language that they understand. This material must provide information on the existing reception conditions, including health and medical care, as well as on the operation of UNHCR in Greece and other organisations that provide assistance and legal counselling to asylum applicants.<sup>608</sup> If the applicant does not understand any of the languages in which the information material is published or if the applicant is illiterate, the information must be provided orally, with the assistance of an interpreter. A relevant record must in such case be kept in the applicant's file.<sup>609</sup>

A number of actors are providing information to newly arrived persons on the islands and the mainland. However, as also mentioned in [Provision of Information on the Procedure](#), access to comprehensive information remains a matter of concern. In any event, information on reception should be related with the actual available reception capacity and the legal obligations imposed on the applicants, i.e. mainly the obligation to remain on a given island for those subject to EU-Turkey Statement.

### 2. Access to reception centres by third parties

#### Indicators: Access to Reception Centres

1. Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?  
 Yes                       With limitations                       No

According to Article 13(7) PD 220/2007, legal advisors or lawyers and representatives of UNHCR shall have unlimited access to reception centres and other housing facilities in order to assist applicants. The Director of the Centre may extend access to other persons as well. Limitations to such access may be imposed only on grounds relating to the security of the premises and of the applicants.<sup>610</sup>

Access of NGOs to temporary accommodation centres and Reception and Identification Centres is subject to prior official authorisation.

## G. Differential treatment of specific nationalities in reception

No differential treatment on the basis of nationality has been reported in 2017.

<sup>607</sup> Human Rights Committee, *O.Y.K.A. v. Denmark*, Communication No 2770/2016, 30 November 2017.

<sup>608</sup> Article 3(2) PD 220/2007.

<sup>609</sup> Article 3(3) PD 220/2007.

<sup>610</sup> Article 13(7) PD 220/2007.

## Detention of Asylum Seekers

### A. General

#### Indicators: General Information on Detention

1. Total number of asylum seekers detained in pre-removal centres in 2017: <sup>611</sup>	9,534
2. Number of asylum seekers in pre-removal detention at the end of 2017:	1,771
3. Number of pre-removal detention centres:	9
4. Total capacity of pre-removal detention centres:	6,927

According to the law, a person applying for asylum at liberty cannot be placed in detention. They may only remain detained if they make an asylum application while being detained for the purpose of removal.<sup>612</sup>

### 1. Statistics on detention

#### 1.1. Detention in pre-removal centres

The number of asylum seekers and other third-country nationals detained in pre-removal detention facilities in Greece increased considerably throughout 2017:

Administrative detention: 2016-2017		
	2016	2017
Number of asylum seekers detained	4,072	9,534
Total number of persons detained	14,864	25,810

Source: Directorate of the Hellenic Police, 21 January 2017; 29 January 2018.

The number of persons who remained in pre-removal detention facilities was 2,213 at the end of 2017. Of those, 1,771 were asylum seekers.<sup>613</sup> The breakdown of detained asylum seekers per pre-removal centre is as follows:

Breakdown of asylum seekers detained by pre-removal centre: 2017			
	Asylum seekers detained in 2017	Asylum seekers in detention at end 2017	Total persons in detention at end 2017
Amygdaleza	1,217	294	434
Tavros (Petrou Ralli)	603	116	238
Corinth	1,657	603	675
Paranesti, Drama	736	363	403
Xanthi	1,079	208	216
Fylakio, Orestiada	3,273	4	4
Lesvos	716	131	157
Kos	253	52	86
Samos	0	0	0
<b>Total</b>	<b>9,534</b>	<b>1,771</b>	<b>2,213</b>

Source: Directorate of the Hellenic Police, 29 January 2018.

<sup>611</sup> Information provided by the Directorate of the Hellenic Police, 29 January 2018. This figure only includes pre-removal centres.

<sup>612</sup> Article 46(2) L 4375/2016.

<sup>613</sup> Information provided by the Directorate of the Hellenic Police, 29 January 2018.

At the end of 2017, there were 54 unaccompanied children in detention in police stations and pre-removal detention centres on the mainland (“protective custody”) and another 438 in Reception and Identification Centres on the Eastern Aegean islands.<sup>614</sup>

According to figures shared by the Asylum Service, the number of persons lodging an asylum application from detention last year was 5,424:

Asylum seekers applying from detention: 2017	
Nationality	Number
Pakistan	3,247
Bangladesh	306
Afghanistan	270
Turkey	269
Algeria	217
Others	1,115
<b>Total</b>	<b>5,424</b>

Source: Asylum Service, 15 February 2018. Note that this number does not correspond to the much higher number of recommendations on detention issued by the Asylum Service throughout the year.

The Asylum Service took 3,303 first instance decisions on applications submitted from detention, of which 2,989 were negative (90.5%), 284 granted refugee status and 30 granted subsidiary protection.<sup>615</sup>

The Asylum Service also received 490 subsequent applications from detention. 202 of those have been deemed admissible and 65 inadmissible.<sup>616</sup>

## 1.2. Detention in police stations and holding facilities

The number of persons detained in police stations is not known, despite the fact that these facilities are still used for the administrative detention of third-country nationals.<sup>617</sup> As a rule, data are not available regarding the number of persons detained in police stations and other detention facilities, with the exception of the data regarding the capacity and the occupancy of police stations and holding facilities in Police Directorates located in the Eastern Aegean islands. According to this data, as of 31 December 2017 there were 90 persons detained in police stations on the islands of **Lesvos, Chios, Samos, Leros, Kos and Rhodes**.

This lack of data regarding persons detained in police stations and holding facilities in Police Directorates can lead to a significant underestimation of the detention population in Greece.

For example, according to the data provided to GCR by the Directorate of the Hellenic Police on 29 January 2018, the number of unaccompanied children in detention at the end of 2017 was 34 children, which refers to the number of unaccompanied children detained at that given day in pre-removal detention centres only. However, the number of unaccompanied children reported by the National

<sup>614</sup> EKKA, *Situation update: Unaccompanied children in Greece*, 31 December 2017, available at: <http://bit.ly/2E531rQ>.

<sup>615</sup> Information provided by the Asylum Service, 15 February 2018.

<sup>616</sup> *Ibid.*

<sup>617</sup> Ombudsman, *Migration flows and refugee protection: Administrative challenges and human rights*, April 2017, available at: <http://bit.ly/2BZOyeG>, 57.

Centre for Social Solidarity (EKKA) in detention on the same day, “based on requests by referral agents”, was 54.<sup>618</sup>

## 2. Detention policy following the EU-Turkey statement

The launch of the implementation of the EU-Turkey statement has had an important impact on detention on the Eastern Aegean islands but also on the mainland, resulting in a significant toughening of the practices applied in the field. In 2017, a total of 46,124 removal decisions were issued, 25,810 (56%) of which also contained a detention order. The number of third-country nationals detained in pre-removal centres under detention order in 2017 was 25,810 compared to 14,864 in 2016, while the increase has been much higher for asylum seekers; 9,534 in 2017 compared to 4,072 in 2016.<sup>619</sup>

In line with the Joint Action Plan on the implementation of the EU-Turkey statement, which recommended an increase in detention capacity on the islands,<sup>620</sup> the pre-removal detention centre of Moria in **Lesvos**, initially established in 2015,<sup>621</sup> was reopened in mid-2017. In addition, a new pre-removal detention facility was opened in **Kos** in March 2017,<sup>622</sup> and another one was established in **Samos** in June 2017 but has not yet become operational.<sup>623</sup>

A “pilot project” is also implemented on Lesvos, under which newly arrived persons belonging to particular nationalities with low recognition rates were immediately placed in detention upon arrival and remained there for the entire asylum procedure. While the project initially focused on nationals of Pakistan, Bangladesh, Egypt, Tunisia, Algeria and Morocco, the list of countries was expanded to 28 in March 2017 and the pilot project was rebranded as “low-profile scheme”.<sup>624</sup>

Moreover, since November 2017, a “pilot” practice of detention of a number of Syrian nationals upon arrival, despite their explicit wish to apply for asylum and without being subjected to reception and identification procedures as provided by the law, has started to be implemented on **Lesvos** and **Chios** subject to available detention capacity.<sup>625</sup> In addition, according to the practice, applicants on the islands whose asylum application is rejected at second instance under the **Fast-Track Border Procedure** are immediately detained upon notification of the second instance negative decision.

As set out in a Police Circular of 18 June 2016, where a person is detected on the mainland in violation of his or her obligation to remain on the islands, “detention measures will be set again in force and the person will be transferred back to the islands for detention – further management (readmission to Turkey).”<sup>626</sup>

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<sup>618</sup> EKKA, *Situation Update: Unaccompanied Children (UAC) in Greece*, 31 December 2017, available at: <http://bit.ly/2E531rQ>.

<sup>619</sup> Information provided by the Directorate of the Hellenic Police, 29 January 2018.

<sup>620</sup> European Commission, *Joint Action Plan on the implementation of the EU-Turkey statement*, Annex to COM(2016) 792, 8 December 2016, para 18.

<sup>621</sup> Joint Ministerial Decision 8038/23/22-ιγ’, Gov. Gazette B’ 118/21.1.2015; Joint Ministerial Decision 8038/23/22-να’, Gov. Gazette B’ 2952/31.12.2015.

<sup>622</sup> Joint Ministerial Decision 8038/23/22-ξε, Gov. Gazette B’ 332/7.2.2017.

<sup>623</sup> Joint Ministerial Decision 3406/2017, Gov. Gazette B’ 2190/27.6.2017.

<sup>624</sup> ECRE, ‘Asylum procedure based on nationality rather than on merit – the situation of Pakistani asylum applicants under the EU Turkey Deal’, 8 December 2017, available at: <http://bit.ly/2kEjTK1>; ActionAid et al., *Transitioning to a government-run refugee and migrant response in Greece*, December 2017, available at: <http://bit.ly/2DsdwCC>, 5; Independent, ‘gees held at Lesvos detention centre resorting to self-harm to escape “poor living conditions”’, 23 September 2017, available at: <https://ind.pn/2E7ZuNm>.

<sup>625</sup> Refugee Support Aegean, ‘Detention as a deterrent’, 15 March 2018, available at: <http://bit.ly/2ptTHbz>.

<sup>626</sup> Directorate of the Hellenic Police, “Εγκύκλιος ΕΛΑΣ 1604/16/1195968/18-6-2016 Διαχείριση παράτυπων αλλοδαπών στα Κέντρα Υποδοχής και Ταυτοποίησης, διαδικασίες Ασύλου, υλοποίηση Κοινής Δήλωσης ΕΕ-Τουρκίας της 18ης Μαρτίου 2016 (πραγματοποίηση επανεισδοχών στην Τουρκία)”, available in Greek at: <http://bit.ly/2ngIEj6>. See also *inter alia* Kathimerini, ‘Islands “suffocating” due to the refugee issue’, 23 August 2016, available in Greek at: <http://bit.ly/2jBL7Fd>.



Following this Circular, all newly arrived persons who have left an Eastern Aegean island in breach of the geographical restriction (see [Freedom of Movement](#)), if arrested, are immediately detained in order to be returned to that island. This detention is applied without any individual assessment and without the person's legal status and any potential vulnerabilities being taken into consideration. Detention in view of transfer from mainland Greece to the given Eastern Aegean island can last for a disproportionate period of time, in a number of cases exceeding one month, thereby raising issues with regard to the state's due diligence obligations. Despite the fact that a number of persons allege that they left the islands due to unacceptable reception conditions and/or security issues, no assessment of the reception capacity is made before returning these persons to the islands. In February 2018, the Administrative Court of Piraeus found that the violation of the geographical restriction was justified due to a threat against the physical integrity of the applicant given the conditions prevailing in the RIC of Moria on **Lesvos**.<sup>627</sup>

In practice, persons returned to the islands either remain detained – this is in particular the case of single men or women – or they are released without any particular care being taken to offer them an accommodation place. Detention on the islands is of particular concern as a high number of third-country nationals, including asylum seekers, continue to be held in detention facilities operated by the police directorates and in police stations, which are completely inappropriate for immigration detention.<sup>628</sup> As a rule this is the case in **Chios, Samos, Leros** and **Rhodes** where police stations were the only available facility for immigration detention in 2017. For those released upon return to the islands, destitution is a considerable risk, as reception facilities on the islands are often overcrowded and exceed their nominal capacity.

In 2017, a total of 1,197 persons have been returned to the Eastern Aegean islands after being apprehended outside their assigned island:

Returns to the islands due to non-compliance with a geographical restriction: 2017						
Lesvos	Chios	Samos	Kos	Leros	Rhodes	Total
446	148	113	390	85	15	<b>1,197</b>

Source: Directorate of the Hellenic Police, 29 January 2018.

In December 2017, following the official visit of the Turkish President in Athens, the Greek authorities proposed to their Turkish counterparts that readmission to Turkey within the framework of the EU-Turkey Statement cover not only the islands but also persons transferred from the islands to detention facilities on the mainland.<sup>629</sup> There were no developments on this proposal by the end of March 2018. However, it is recalled that during the second semester of 2016, when this practice was initially applied on grounds of alleged law-breaking conduct (*παραβατική συμπεριφορά*), it led to approximately 1,600 persons transferred from the islands to pre-removal detention centres on the mainland.<sup>630</sup>

There were 8 active pre-removal detention centres in Greece at the end of 2017, compared to 6 active facilities at the end of 2016. This includes six centres on the mainland (**Amygdaleza, Tavros, Corinth, Xanthi, Paranesti, Fylakio**) and two on the islands (**Lesvos, Kos**). A new pre-removal detention centre

<sup>627</sup> Administrative Court of Piraeus, Decision AP 94/2018.

<sup>628</sup> UNHCR, *Explanatory Memorandum to UNHCR's Submission to the Committee of Ministers of the Council of Europe on developments in the management of asylum and reception in Greece*, May 2017, available at: <http://bit.ly/2BbSrAA>, 11.

<sup>629</sup> Kathimerini, 'Athens to propose transfer of migrants to Ankara', 3 January 2018, available at: <http://bit.ly/2BYOR9E>; Emprosnet, 'Μουζάλας: «Παράθυρο» από την Τουρκία για μεταφορά αιτούντων άσυλο', 12 December 2017, available in Greek at: <http://bit.ly/2FSMOXb>.

<sup>630</sup> AIDA, Country Report on Greece, 2016 Update, March 2017, available at: <http://bit.ly/2nwd9nA>, 118-119.

was set up on **Samos** but is not yet operational. The total pre-removal detention capacity is 6,927 places.

## B. Legal framework of detention

### 1. Grounds for detention

#### Indicators: Grounds for Detention

- |  |  |  |                                |
|--|--|--|--------------------------------|
| 1. In practice, are most asylum seekers detained                                       |  |  |                                |
| ❖ on the territory:  | <input checked="" type="checkbox"/> Yes        | <input type="checkbox"/> No                |                                |
| ❖ at the border:   | <input type="checkbox"/> Yes                   | <input checked="" type="checkbox"/> No     |                                |
| 2. Are asylum seekers detained in practice during the Dublin procedure? <sup>631</sup> | <input type="checkbox"/> Frequently            | <input checked="" type="checkbox"/> Rarely | <input type="checkbox"/> Never |
| 3. Are asylum seekers detained during a regular procedure in practice?                 | <input checked="" type="checkbox"/> Frequently | <input type="checkbox"/> Rarely            | <input type="checkbox"/> Never |

#### 1.1. Asylum detention

Article 46 L 4376/2016 regulates the detention of asylum seekers. According to this provision, an asylum seeker shall not be detained on the sole reason of seeking international protection or having entered and/or stayed in the country irregularly.<sup>632</sup>

The law prohibits the detention of asylum seekers who apply at liberty. An asylum seeker may only remain in detention if he or she is already detained for the purpose of removal when he or she makes an application for international protection, and subject to a new detention order following an individualised assessment to establish whether detention can be ordered on asylum grounds.<sup>633</sup>

In this case, an asylum seeker may be kept in detention for one of the following 5 grounds:<sup>634</sup>

- (b) in order to determine his or her identity or nationality;
- (c) in order to determine those elements on which the application for international protection is based which could not be obtained otherwise, in particular when there is a risk of absconding of the applicant;
- (d) when it is ascertained on the basis of objective criteria, including that he or she already had the opportunity to access the asylum procedure, that there are reasonable grounds to believe that the applicant is making the application for international protection merely in order to delay or frustrate the enforcement of a return decision, if it is probable that the enforcement of such a measure can be effected;
- (e) when he or she constitutes a danger for national security or public order;
- (f) when there is a serious risk of absconding of the applicant, in order to ensure the enforcement of a transfer decision according to the Dublin III Regulation.

For the establishment of a risk of absconding for the purposes of detaining asylum seekers on grounds

<sup>631</sup> This is the case where a person has asked for asylum while already in detention (and is then subject to Dublin III Regulation usually because a family member has been residing as an asylum seeker in another member-state). On the contrary, this does not mean that if a person submits an asylum application for which another Member State is responsible under Dublin III Regulation will then be detained in order for the transfer to successfully take place.

<sup>632</sup> Article 46(1) L 4375/2016.

<sup>633</sup> Article 46(2) L 4375/2016.

<sup>634</sup> Article 46(2) L 4375/2016.

(b) and (e), the law makes reference to the definition of “risk of absconding” in pre-removal detention.<sup>635</sup> This provision includes a non-exhaustive list of objective criteria which may be used as a basis for determining the existence of such a risk, namely where a person:<sup>636</sup>

- ❖ Does not comply with an obligation of voluntary departure;
- ❖ Has explicitly declared that he or she will not comply with the return decision;
- ❖ Is in possession of forged documents;
- ❖ Has provided false information to the authorities;
- ❖ Has been convicted of a criminal offence or is undergoing prosecution, or there are serious indications that he or she has or will commit a criminal offence;
- ❖ Does not possess travel documents or other identity documents;
- ❖ Has previously absconded; and
- ❖ Does not comply with an entry ban.

Article 46(2) L 4375/2016 also provides that such a detention measure should be applied exceptionally, after an individual assessment and only as a measure of last resort where no alternative measures can be applied. A new detention order should be also issued by the competent police authority,<sup>637</sup> which must be fully and duly motivated.<sup>638</sup> With the exception of the “public order” ground, the detention order is issued following a recommendation (*εισήγηση*) by the Head of the Asylum Service. However, the final decision on the detention lies with the Police.

The Asylum Service made 15,603 recommendations in 2017, of which 10,078 recommended the prolongation of detention and 5,525 advised against detention.<sup>639</sup>

### 1.1.1. Detention of asylum seekers applying at liberty

As mentioned above, pursuant to the provisions of Article 46(2) L 4375/2016, Greek law allows the detention of an asylum seeker only where the person in question submits an asylum application while already in detention in view of removal, i.e. based on a deportation or a return decision. Moreover, the detention of an asylum seeker cannot be ordered based on L 3907/2011 transposing the Returns Directive or L 3386/2005 which refers to the deportation of irregularly staying third-country nationals to their country of origin, as these legal frameworks are not applied to asylum seekers.

However, asylum seekers who have applied for asylum at liberty in one of the Eastern Aegean islands and are subject to a geographical restriction are detained as a rule if arrested outside the assigned in order to be transferred back in that island. In these cases, a detention order is imposed contrary to the guarantees provided by law for administrative detention and without their asylum seeker legal status being taken into consideration: the detention order is unlawfully issued based on L 3907/2011 and/or L 3386/2005. In a recent case supported by GCR, the Administrative Court of Piraeus confirmed that the detention of a Syrian asylum seeker in **Tavros** for the purpose of transfer back to **Chios** on the basis of Article 30 L 3907/2011 was “not lawful” as long as his application was still pending, and ordered the release of the applicant.<sup>640</sup>

Moreover, detention of asylum seekers who do not apply for asylum while already in pre-removal detention also occurs in cases where detention is ordered on public order or national security grounds, in contravention of the law. In practice, applicants arrested within the framework of the criminal

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<sup>635</sup> Article 18(g) L 3907/2011, cited by Article 46(2)(b) and (e) L 4375/2016.

<sup>636</sup> Article 18(g)(a)-(h) L 3907/2011.

<sup>637</sup> That is the Aliens Division Police Director of Attica or Thessaloniki in cases falling under the competence of the two General Police Directorates, or the relevant Police Director in other cases: Article 46(3) L 4375/2016.

<sup>638</sup> Article 46(3) L 4375/2016.

<sup>639</sup> Information provided by the Asylum Service, 15 February 2018.

<sup>640</sup> Administrative Court of Piraeus, Decision AP 59/2018.

procedure, even if accused of minor offences for which the Criminal Court does not impose pre-trial detention or after custodial sentences have been suspended, are detained under Article 46 L 4375/2016 on public order or national security grounds.

Despite the clear and precise wording of the legal provision, the Administrative Court of Athens recently upheld one such detention order, disregarding the fact that the asylum seeker had been arrested when receiving his asylum seeker card and placed in administrative detention.<sup>641</sup>

The discrepancy between the data on asylum seekers detained in 2017 provided by the Hellenic Police (9,534) and those provided by the Asylum Service (5,424) may also indicate a misinterpretation of said provision.

### 1.1.2. The interpretation of the legal grounds for detention in practice

There is a lack of a comprehensive individualised procedure for each detention case, despite the relevant legal obligation imposed by the law.<sup>642</sup> As stated by the Greek Ombudsman:

“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.”<sup>643</sup>

This is of particular concern with regard to the proper application of the lawful detention grounds provided by national legislation, as the particular circumstances of each case are not duly taken into consideration. Furthermore, the terms, the conditions and the legal grounds for the lawful imposition of a detention measure seem to be misinterpreted in some cases. These cases include the following:

#### Detention on public order or national security grounds

As repeatedly reported in previous years, public order grounds are used in an excessive and on numerous occasions unjustified manner, both in the framework of pre-removal detention and detention of asylum seekers.<sup>644</sup> This continues to be the case. Beyond the fact that detention on public order grounds is not covered by the Return Directive,<sup>645</sup> and thus the relevant Greek provision on pre-removal detention – Article 30(1)(c) L 3907/2011 – is an incorrect transposition of the EU law in this respect, for both detainees subject to removal and asylum seekers, detention on public order grounds is usually not properly justified.

The authorities issue detention orders without prior examination of whether the “applicant’s individual conduct represents a genuine, present and sufficiently serious threat”, in line with the case of law of the Council of State and the CJEU.<sup>646</sup> This is particularly the case where these grounds are based solely on a prior prosecution for a minor offence, even if no conviction has ensued, or in cases where the person has been released by the competent Criminal Court after the suspension of custodial sentences. The

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<sup>641</sup> Administrative Court of Athens, Decision 71/2018.

<sup>642</sup> GCR, *The implementation of Alternatives to Detention in Greece*, December 2015, available at: <https://goo.gl/bynXlh>.

<sup>643</sup> Ombudsman, *Migration flows and refugee protection: Administrative challenges and human rights*, April 2017, 57.

<sup>644</sup> See e.g. Ombudsman, *Return of third-country nationals*, Special Report 2016, available in Greek at: <http://bit.ly/2E7MQtQ>; UNHCR, *Greece as a Country of Asylum - UNHCR's Recommendations*, 6 April 2015, available at: <http://bit.ly/2ke9lpA>, para VI.10; Ombudsman, *Return of third-country nationals*, Special Report 2014, available in Greek at: <http://bit.ly/2k40chi>, 4.

<sup>645</sup> European Commission, *Return Handbook*, 27 September 2017, available at: <http://bit.ly/2nITCQ>, 78-79.

<sup>646</sup> CJEU, Case C-601/15 PPU *J.N.*, Judgment of 15 February 2016, paras 65-67. See e.g. Council of State, Decisions 427/2009, 1127/2009 and 2414/2008, which highlight that a mere reference to a criminal conviction does not suffice for the determination of a threat to national security or public order.

Ombudsman has once again criticised this practice.<sup>647</sup> In addition, detention on national security or public order grounds has been also ordered for reasons of irregular entry into the territory, contrary to Article 31 of the Refugee Convention and the prohibition on detaining asylum seekers on account of their irregular entry or presence under Article 46(1) L 4375/2016.<sup>648</sup>

### **Detention of applicants considered to apply merely in order to delay or frustrate return**

The June 2016 Police Circular on the implementation of the EU-Turkey Statement provides that, for applicants subject to the EU-Turkey statement who lodge their application while already in detention,

“[T]he Regional Asylum Offices will recommend the continuation of detention on the ground that: ‘there are reasonable grounds to believe that the applicant is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision, in accordance with art. 46(2)(c) L. 4375/2016 in view of his or her likely immediate readmission to Turkey.’”<sup>649</sup>

In practice, this exact wording is invoked in a significant number of detention orders to applicants subject to the EU-Turkey statement, following a relevant recommendation of the Asylum Service, despite the fact that Article 46(2)(c) L 4375/2016 requires the authorities to “substantiate on the basis of objective criteria... that there are reasonable grounds to believe” that the application is submitted “merely in order to delay or frustrate the enforcement of the return decision”. Neither the detention order nor the Asylum Service recommendation are properly justified, as they merely repeat part of the relevant legal provision, while no objective criteria or reasonable grounds are invoked or at least deduced from individual circumstances.

It should be also noted that, since a number of persons are immediately detained upon arrival under the “pilot project” / “low-profile scheme”, it is clear that these asylum seekers have not “already had the opportunity to access the asylum procedure” while at liberty, as required by the law.

The Administrative Court of Mytilene has confirmed in two cases regarding Syrian applicants that detention on the ground that the asylum application was made in order to delay or frustrate the return procedure was insufficiently motivated, as the detention order provided no objective criteria leading to the conclusion that the persons’ asylum claim had the sole purpose of delaying or frustrating return.<sup>650</sup>

## **1.2. Detention without legal basis or *de facto* detention**

Apart from detention of asylum seekers under L 4375/2016 and pre-removal detention under L 3386/2005 and L 3907/2011, detention without legal basis in national law or *de facto* detention measures may be applied for immigration purposes. These cases include the following:

### **1.2.1. Detention pending transfer to RIC**

According to Article 14(1) L 4375/2016, newly arrived persons “shall be directly led, under the responsibility of the police or port authorities ... to a Reception and Identification Centre.” However as

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<sup>647</sup> Ombudsman, *Migration flows and refugee protection: Administrative challenges and human rights*, April 2017, 59.

<sup>648</sup> See e.g. Administrative Court of Athens, Decision 71/2018.

<sup>649</sup> Directorate of the Hellenic Police no 1604/16/1195968/18-6-2016, “Διαχείριση παράτυπων αλλοδαπών στα Κέντρα Υποδοχής και Ταυτοποίησης, διαδικασίες Ασύλου, υλοποίηση Κοινής Δήλωσης ΕΕ-Τουρκίας της 18ης Μαρτίου 2016 (πραγματοποίηση επανεισδοχών στην Τουρκία)”, available in Greek at: <http://bit.ly/2ngIEj6>.

<sup>650</sup> Administrative Court of Mytilene, Decisions 218/2017 and 219/2017 Administrative. See AIDA, ‘Greece: Court curtails detention policy for Syrians on the islands’, 8 November 2017, available at: <http://bit.ly/2C1foU1>.

already noted in 2016,<sup>651</sup> due to an increase in the arrivals at the Greek-Turkish land border in **Evros**, delays occur in the transfer of the newly arrived to the RIC of Fylakio, ranging from a few days to periods exceeding one month depending on the flows. During this waiting period, prior to their referral to the RIC of Fylakio, newly arrived persons remain detained in a pre-removal detention centre under a decision issued by the police, despite the lack of legal basis for such detention. Their detention is imposed “up to the time that [the person] will be transferred to Evros (Fylakio) RIC in order to be subject to reception and identification procedures”, as stated in the relevant detention order.

In mid-2017, GCR supported cases of persons detained pending their transfer to the RIC of Fylakio for a period varying between 1 and 3 months.<sup>652</sup> In October 2017, following a number of cases referred by GCR, the Greek Ombudsman mentioned that pursuant to national legislation detention measures can only be ordered after and not prior to the **Reception and Identification Procedure** and request the competent authorities to clarify on which legal basis they order detention before transfer to the RIC.<sup>653</sup>

### 1.2.2. *De facto* detention in RIC

Newly arrived persons transferred to a RIC are subject to a 3-day “restriction of liberty within the premises of the Reception and Identification Centres” (*περιορισμός της ελευθερίας εντός του κέντρου*), which can be further extended by a maximum of 25 days if reception and identification procedures have not been completed.<sup>654</sup> This restriction of freedom entails “the prohibition to leave the Centre and the obligation to remain in it.”<sup>655</sup> Taking into consideration the fact that according to the law the persons should remain restricted within the premises of the RIC and are not allowed to leave, the measure provided by Article 14 L 4375/2016 is a *de facto* detention measure, even if it is not classified as such under Greek law.<sup>656</sup> No legal remedy is provided in national law to challenge this “restriction of freedom” measure during the initial 3-day period.<sup>657</sup> Furthermore, the initial measure is imposed automatically, as the law does not foresee an obligation to carry out an individual assessment.<sup>658</sup> This measure is also applied to asylum seekers who may remain in the premises of RIC for a total period of 25 days even after lodging an application.<sup>659</sup>

In practice, following criticism by national and international organisations and bodies, as well as due to the limited capacity to maintain and run closed facilities on the islands with high numbers of people,<sup>660</sup> the “restriction of freedom” within the RIC premises is not applied as a *de facto* detention measure in RIC facilities on the islands of **Lesvos, Chios, Samos, Leros** and **Kos**. There, newly arrived persons are allowed to exit the RIC facility. However, for those subject to a “restriction of freedom” pursuant to in the RIC of **Fylakio** near the Evros border, the measure is applied as *de facto* detention.

Moreover, according to GCR findings, unaccompanied children may remain in the RIC of Fylakio for a period exceeding the maximum period of 25 days under the pretext of “protective custody”, while waiting for a place in a reception facility to be made available. In 2017 this period reached 6 months in a number of children’s cases. According to the most recent available data, the number of persons

<sup>651</sup> UNHCR, *Greece Factsheet 1 – 31 December 2016*, available at: <http://bit.ly/2lqUI6z>.

<sup>652</sup> *Inter alia* GCR Document No Θ 422, 19 October 2017.

<sup>653</sup> Ombudsman, Document No 235580/46773/2017, 25 October 2017 “Detention in Pre-Removals Centers of Eastern Macedonia-Thrace before referral to RIC”.

<sup>654</sup> Article 14(2) L 4375/2016.

<sup>655</sup> Article 14(3) L 4375/2016.

<sup>656</sup> See to that effect ECtHR, *Ilias and Ahmed v. Hungary*, Application No 47287/15, Judgment of 14 March 2017, para 66.

<sup>657</sup> Article 14(4) L 4375/2016.

<sup>658</sup> Article 14(2) L 4375/2016.

<sup>659</sup> Article 14(7) L 4375/2016.

<sup>660</sup> UNHCR, *Explanatory Memorandum to UNHCR’s Submission to the Committee of Ministers of the Council of Europe on developments in the management of asylum and reception in Greece*, May 2017, 10.



remaining in the RIC of Fylakio on 1 August 2017 was of 235 persons, while the total capacity of the RIC in Fylakio was 240 places.<sup>661</sup>

### 1.2.3. *De facto* detention in transit zones

A regime of *de facto* detention also applies in the case of persons entering the Greek territory from the **Athens International Airport** – usually through a transit flight – without a valid entry authorisation. These persons receive an entry ban to the Greek territory and are then arrested and held in order to be returned on the next available flight. Persons temporarily held while waiting for their departure are not systematically recorded in a register.<sup>662</sup> In case the person express the intention to apply for asylum, then the person is detained at the holding facility of the Police Directorate of the Athens Airport, next to the airport building, and after the full registration the application is examined under the **Border Procedure**. As provided by the law, where no decision is taken within 28 days, the person is allowed to enter the Greek territory for the application to be examined according to the **Regular Procedure**.<sup>663</sup>

However, despite the fact that national legislation provides that rights and guarantees provided by national legislation *inter alia* on the detention of asylum seekers should also be enjoyed by applicants who submit an application in a transit zone or at an airport,<sup>664</sup> no detention decision is issued for those applicants who submit an application after entering the country from the Athens International Airport without a valid entry authorization. These persons remain *de facto* detained at the Athens Airport Police Directorate for a period up to 28 days from the full registration of the application. According to the police authorities the persons held there are considered under “supervision” and not detention.<sup>665</sup>

To GCR’s knowledge, this practice is applied indiscriminately to any person under these circumstances, including vulnerable groups. That was for example the case of a single-parent family with two minor children aged 8 and 11 years old, for whom an entry ban was issued upon arrival at the Athens International Airport. The family remained detained, without any detention order, in the Police Directorate of the Athens Airport for a total period of 31 days, of which 28 days from the full registration of the asylum application.<sup>666</sup>

### 1.2.4. Detention in the case of alleged push backs

As mentioned in **Access to the Territory**, throughout 2017, cases of alleged push backs at the Greek-Turkish land border have been systematically reported. As it emerges from these allegations, there is a pattern of *de facto* detention of third-country nationals entering the Evros land border before allegedly being pushed back to Turkey. In particular, as reported, newly arrived persons are arbitrarily arrested without being formally registered and then *de facto* detained in police stations close to the borders. No proper official investigation has been launched following these allegations; the authorities deny the allegations.<sup>667</sup> An *ex officio* investigation with regard to the cases of alleged push backs was launched by the Greek Ombudsman in June 2017.<sup>668</sup>

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<sup>661</sup> Central Operational Body for Migration (KEPOM), *Summary Statement of Refugee Flows*, 1 August 2017, available at: <http://bit.ly/2CmmEd1>.

<sup>662</sup> CPT, *Report to the Greek Government on the visits to Greece carried out by CPT*, CPT/Inf (2017) 25, 26 September 2017, available at: <http://bit.ly/2Fktu5U>, para 59.

<sup>663</sup> Article 60(2) L 4375/2016.

<sup>664</sup> Article 60(1) L 4375/2016.

<sup>665</sup> Athens Airport Police Directorate, Doc. No 4888/3/581/350, 20 March 2017.

<sup>666</sup> GCR, Document No 177/2017.

<sup>667</sup> See e.g. Directorate of the Hellenic Police, Reply to parliamentary question No 6274, No 7017/4/ 20967-γ', 2 July 2017, available in Greek at: <http://bit.ly/2EHVp2l>.

<sup>668</sup> Ombudsman, Decision No 105, 9 June 2017, available in Greek at: <http://bit.ly/2ofLt6p>.



## 2. Alternatives to detention

### Indicators: Alternatives to Detention

1. Which alternatives to detention have been laid down in the law?  
 Reporting duties  
 Surrendering documents  
 Financial guarantee  
 Residence restrictions
2. Are alternatives to detention used in practice?  
 Yes  No

Article 46(2) L 4375/2016 requires authorities to examine and apply alternatives to detention before resorting to detention of an asylum seeker. A non-exhaustive list of alternatives to detention provided by national legislation, both for third-country nationals under removal procedures and asylum seekers, is mentioned in Article 22(3) L 3907/2011. Regular reporting to the authorities and an obligation to reside at a specific area are included on this list. The possibility of a financial guarantee as an alternative to detention is also foreseen in the law, provided that a Joint Decision of the Minister of Finance and the Minister of Public Order will be issued with regard to the determination of the amount of such financial guarantee.<sup>669</sup> However, such a Joint Ministerial Decision is still pending since 2011. In any event, alternatives to detention are systematically neither examined nor applied in practice.<sup>670</sup>

When issuing recommendations on the continuation or termination of detention of an asylum seeker,<sup>671</sup> the Asylum Service tends to use standardised recommendations, stating that detention should be prolonged “if it is judged that alternative measures may not apply”. Thus, the Asylum Service does not proceed to any assessment and it is for the Police to decide on the implementation of alternatives to detention.

The implementation of alternatives to detention in line with national law “in order to render detention the exception, as stipulated in the law” has also been one of the key recommendation of the Ombudsman, who found in 2017 that administrative detention “is not imposed as an exceptional measure, but as the norm, without examining alternative, less onerous, measures.”<sup>672</sup>

### The geographical restriction on the islands

As regards the “geographical restriction” on the islands, i.e. the obligation to remain on the island of arrival, imposed systematically to newly arrived persons subject to the EU-Turkey statement, after the initial issuance of a detention order, the legal nature of the measure has to be assessed by taking into account the “concrete situation” of the persons and “a whole range of criteria such as the type, duration, effects and manner of implementation of the measure.”<sup>673</sup> In any event, it should be mentioned that the measure is:

- (a) Not examined and applied before ordering detention;<sup>674</sup>
- (b) Not limited to cases where a detention ground exists;<sup>675</sup>

<sup>669</sup> Article 22(3) L 3907/2011.

<sup>670</sup> Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants on his mission to Greece*, 24 April 2017, para 48.

<sup>671</sup> Article 46(3) L 4375/2016.

<sup>672</sup> Ombudsman, *Migration flows and refugee protection: Administrative challenges and human rights*, April 2017, 59.

<sup>673</sup> See *inter alia* ECtHR, *Guzzardi v. Italy*, Application No 7367/76, Judgment of 6 November 1980, para 92-93.

<sup>674</sup> UN Commission on Human Rights, *Report of the Working Group on Arbitrary Detention. Addendum: report on the visit of the Working Group to the United Kingdom on the issue of immigrants and asylum seekers*, 18 December 1998, E/CN.4/1999/63/Add.3, available at: <http://bit.ly/2kFs5LN>, para 33: “Alternative and non-custodial measures, such as reporting requirements, should always be considered before resorting to detention”.

- (c) Applied indiscriminately, without a proportionality test, for an indefinite period (without a maximum time limit to be provided by law) and without an effective legal remedy to be in place.

As it has been observed, a national practice systematically imposing an alternative to detention “would suggest that the system is arbitrary and not tailored to the individual circumstances” of the persons concerned.<sup>676</sup>

Non-compliance with the geographical restriction leads to the re-detention of persons arrested outside their assigned island with a view to be transferred back. The lawfulness of this practice is dubious given the prohibition on detaining asylum seekers who are at liberty. Furthermore, persons returned either remain detained or, if released, often face harsh living conditions due to overcrowded reception facilities on the islands. In this regard, the National Commission for Human Rights stated in December 2017 that “given the current conditions, it is necessary to eliminate the entrapment of applicants for international protection in the Greek islands.”<sup>677</sup>

### 3. Detention of vulnerable applicants

#### Indicators: Detention of Vulnerable Applicants

1. Are unaccompanied asylum-seeking children detained in practice?  
 Frequently  Rarely  Never  
  
❖ If frequently or rarely, are they only detained in border/transit zones?  Yes  No
2. Are asylum seeking children in families detained in practice?  
 Frequently  Rarely  Never

National legislation provides a number of guarantees with regard to the detention of vulnerable persons, yet does not prohibit their detention. According to Article 46 L 4375/2016, women should be detained separately from men, the privacy of families in detention should be duly respected,<sup>678</sup> and the detention of minors should be avoided. Moreover, according to the law, “the vulnerability of applicants... shall be taken into account when deciding to detain or to prolong detention.”<sup>679</sup>

More generally, Greek authorities have the positive obligation to provide special care to applicants belonging to vulnerable groups (see [Special Reception Needs](#)).<sup>680</sup> However, persons belonging to vulnerable groups are detained in practice, without a proper identification of vulnerability and individualised assessment prior to the issuance of a detention order. In 2017, GCR has supported cases of vulnerable persons such as persons with disabilities or serious physical or mental health problems, including victims of torture, who have remained in detention even if their vulnerability has been identified.<sup>681</sup>

#### 3.1. Detention of unaccompanied children

Unaccompanied or separated children “as a rule should not be detained”, and their detention is permitted “only in very exceptional cases... as a last resort solution, only to ensure that they are safely

<sup>675</sup> FRA, *Fundamental rights: challenges and achievements in 2012*, available at: <http://bit.ly/2EHr0k7>, 52.

<sup>676</sup> UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at: <http://bit.ly/2mJk3Uh>, 43.

<sup>677</sup> NCHR, *Report on the condition of the reception and asylum system in Greece*, December 2017, available at: <http://bit.ly/2nkf1P0>.

<sup>678</sup> Article 46(10)(b) L 4375/2016.

<sup>679</sup> Article 46(8) L 4375/2016.

<sup>680</sup> Articles 17 and 20 PD 220/2007.

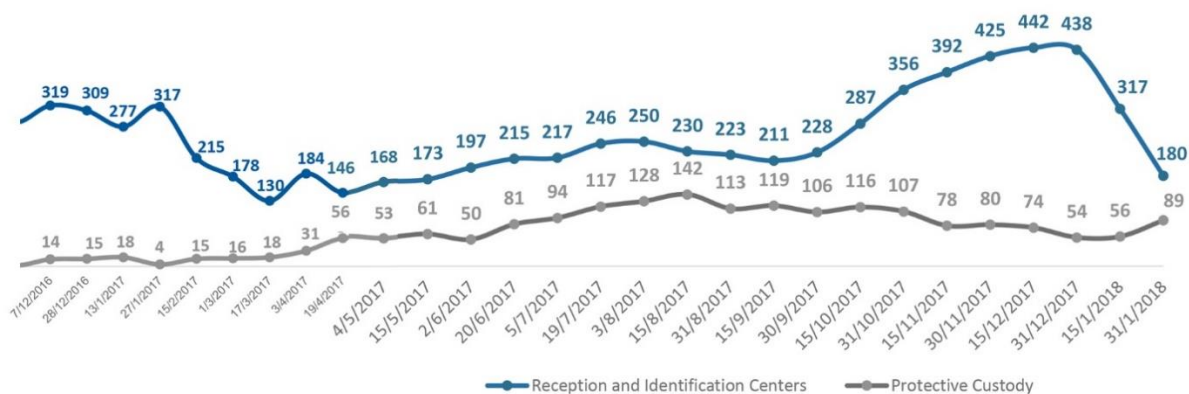
<sup>681</sup> See e.g. GCR, Documents No 612/2017, No 370/2017 and No 312/2017.

referred to appropriate accommodation facilities for minors.”<sup>682</sup> Nevertheless, national legislation does not explicitly prohibit detention of unaccompanied children and the latter is applied in practice. As no best interests determination procedure is provided by Greek law, no assessment of the best interests of the child takes place before or during detention, in contravention of the Convention on the Rights of the Child.<sup>683</sup>

Due to the lack of accommodation facilities or transit facilities for children, detention of unaccompanied children is systematically imposed and may be prolonged for periods ranging from a few days to more than two months, pending their transfer to an accommodation facility.<sup>684</sup> Unaccompanied children are detained in police stations and pre-removal facilities on the mainland (“protective custody”) or in Reception and Identification Centres on the islands in unacceptable detention conditions.

Despite the announcement by the Minister for Migration Policy that “not a single child would be kept in protective custody” by the end of 2017,<sup>685</sup> the detention of unaccompanied children continues to occur. Out of a total 3,350 unaccompanied children estimated in Greece at the end of the year, as many as 2,290 were on a waiting list for placement in a shelter. Of those, 54 were detained in police stations and pre-removal centres on the mainland, while 438 were in closed facilities on the islands.<sup>686</sup> Unaccompanied children are detained either on the basis of the pre-removal or asylum detention provisions, or on the basis of the provisions concerning “protective custody”.<sup>687</sup> The latter is subject to no maximum time limit.

The number of unaccompanied children detained on the mainland (“protective custody”) and on the islands (Reception and Identification Centres) between December 2016 and January 2018 has evolved as follows:



Source: EKKA, Situation Update: Unaccompanied Children (UAC) in Greece, 31 January 2018, <http://bit.ly/2C4D3Ta> and EKKA, Situation Update: Unaccompanied Children (UAC) in Greece, 4 May 2017, <http://bit.ly/2nKHepJ>.

The UN Special Rapporteur on the human rights of migrants criticised the detention of unaccompanied children following his latest visit to Greece.<sup>688</sup>

<sup>682</sup> Article 46(10)(c) L 4375/2016.

<sup>683</sup> L 2101/1992, Gov. Gazette A' 192/2-12-1992 has ratified the Convention on the Rights of the Child.

<sup>684</sup> Efsyn, 'Πρωτοχρονιά πίσω από τα κάγκελα', 30 December 2017, available in Greek at: <http://bit.ly/2EQqM83>.

<sup>685</sup> AMNA, 'Υπ. Μεταναστευτικής Πολιτικής: Ως το τέλος του έτους όλα τα ασυνόδευτα παιδιά σε κατάλληλες δομές', 2 August 2017, available in Greek at: <http://bit.ly/2wo3hO5>.

<sup>686</sup> EKKA, *Situation Update: Unaccompanied Children in Greece*, 31 December 2017, available at: <http://bit.ly/2E531rQ>; Human Rights Watch, 'Asylum-Seeking Kids Locked Up in Greece', 23 January 2018, available at: <http://bit.ly/2n6FKOC>.

<sup>687</sup> Article 118 PD 141/1991.

<sup>688</sup> Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants on his mission to Greece*, 24 April 2017, paras 103-104.

## Detention following wrong age assessment

Despite the fact that there are currently two Ministerial Decisions outlining age assessment procedures for unaccompanied children (see [Identification](#)), within the scope of the reception and identification procedures,<sup>689</sup> and that of the asylum procedure,<sup>690</sup> no age assessment procedure is provided by the national framework to be applied by the Hellenic Police for minors held in detention. In practice, children under the responsibility of police authorities are deprived of any age assessment guarantees set out in the relevant Ministerial Decision, and systematically undergo medical (X-ray) examinations in case their age is disputed. In addition to the limited reliability and highly invasive nature of the method used, it should be noted that no remedy is in place to challenge the outcome of that procedure.

These shortcomings with regard to the age assessment procedure result in a number of children being wrongfully identified and registered as adults, and placed in detention together with adults. The Ombudsman stressed the fact that “unfortunately minors continue to be discovered among the population of adult detainees.”<sup>691</sup> This is corroborated by the findings of the GCR.<sup>692</sup>

### 3.2. Detention of families

Despite the constant case law of the ECtHR with regard to the detention of families in the context of migration control,<sup>693</sup> in particular after the launch of the EU-Turkey statement, families are detained. This is especially the case for families who due to the unacceptable living conditions prevailing on the islands (see [Conditions in Reception Facilities](#)) have left the latter without prior authorisation and are then detained on the mainland, with a view to be transferred back to the islands.

Among others, GCR has supported cases of single-parent families,<sup>694</sup> families with minor children,<sup>695</sup> or families where the one member remained detained.<sup>696</sup>

## 4. Duration of detention

### Indicators: Duration of Detention

- |  |          |
|--|----------|
| 1. What is the maximum detention period set in the law (incl. extensions): | 3 months |
| 2. In practice, how long in average are asylum seekers detained?           | 3 months |

According to Greek legislation, the maximum period allowed for detention of an asylum seeker applying from detention varies according to the applicable detention ground, while special rules govern the detention of unaccompanied children:

- ❖ Applicants detained for (a) verification of identity or nationality; (b) establishment of elements of the claim, where there is a risk of absconding; or (c) for applying for asylum merely to frustrate or delay return proceedings, are initially kept in detention for a maximum period of 45

<sup>689</sup> Joint Ministerial Decision 92490/2013 on the Programme for medical examination, psychosocial diagnosis and support and referral of third-country nationals entering without documentation to first reception facilities, Gov. Gazette 2745/B/29-10-2013, available in Greek at: <http://bit.ly/1FI5OVT>.

<sup>690</sup> Joint Ministerial Decision 1982/2016, Verification of minority of applicants for international protection, Gov. Gazette 335/B/16-12-2016, available in Greek at: <http://bit.ly/2kS49Jf>.

<sup>691</sup> Ombudsman, *Migration flows and refugee protection: Administrative challenges and human rights*, April 2017, 75.

<sup>692</sup> GCR, Documents No 364/17 and 211/2017.

<sup>693</sup> See for example ECtHR, *Mahmundi and Others v. Greece*, Application No 14902/10, Judgment of 31 July 2012.

<sup>694</sup> GCR, Document No 76/2017.

<sup>695</sup> GCR, Document No 404/2017.

<sup>696</sup> GCR, Document No 235/2017.

days. This can be extended by another 45 days if the Asylum Service recommendation on detention is not withdrawn (see [Grounds for Detention](#));<sup>697</sup>

- ❖ Applicants detained for (d) public order reasons or (e) pending a Dublin transfer can remain in detention for a maximum period of 3 months;<sup>698</sup>
- ❖ Unaccompanied asylum seeking children can be detained “for the safe referral to appropriate accommodation facilities” for a period not exceeding 25 days. According to the provision in case of “to exceptional circumstances, such as the significant increase in arrivals of unaccompanied minors, and despite the reasonable efforts by competent authorities, it is not possible to provide for their safe referral to appropriate accommodation facilities”, detention may be prolonged for a further 20 days.<sup>699</sup>

In practice, however, the time limit of detention is considered to start running from the moment an asylum application is formally lodged with the competent Regional Asylum Office or Asylum Unit rather than the moment the person is detained. As delays are reported systematically in relation to the registration of asylum applications from detention, i.e. from the time that the detainee expresses the will to apply for asylum up to the registration of the application (see [Registration](#)), the period that asylum seekers spend in detention is *de facto* longer and may exceed 3 months.<sup>700</sup> GCR has documented detention cases where the asylum application was registered with substantial delay, exceeding in certain occasions 2 months. The period of detention varies based on the nationality and language of the detainee, as well as on the availability of interpreters.

Beyond setting out maximum time limits, the law has provided further guarantees with regard to the detention period. Thus detention “shall be imposed for the minimum necessary period of time” and “delays in administrative procedures that cannot be attributed to the applicant shall not justify the prolongation of detention.”<sup>701</sup> Moreover, as the law provides “the detention of an applicant constitutes a reason for the acceleration of the asylum procedure, taking into account possible shortages in adequate premises and the difficulties in ensuring decent living conditions for detainees”. However, GCR has documented cases where the procedure is not carried out with due diligence and detention is prolonged precisely because of the delays of the administration. This has particularly been the case where even the asylum interview has not taken place during the initial period of the first 45 days, as it is either scheduled after the expiry of the 45-day period or postponed and rescheduled after that period, thus leading to a prolongation for a further 45 days.<sup>702</sup> This is also the case where the examination of the appeal is scheduled on a date after the expiry of the maximum time limit.

Finally, it should be mentioned that time limits governing the detention of asylum seekers differ from those provided for the detention of third-country nationals in view of removal. In relation to pre-removal detention, national legislation transposing the Returns Directive provides a maximum detention period that cannot exceed 6 months,<sup>703</sup> with the possibility of an exceptional extension not exceeding twelve 12 months, in cases of lack of cooperation by the third-country national concerned, or delays in obtaining the necessary documentation from third countries.<sup>704</sup>

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<sup>697</sup> Article 46(4)(b) L 4375/2016, citing Article 46(2)(a), (b) and (c).

<sup>698</sup> Article 46(4)(c) L 4375/2016, citing Article 46(2)(d) and (e).

<sup>699</sup> Article 46(10)(b) L 4375/2016.

<sup>700</sup> UNHCR, *Explanatory Memorandum to UNHCR’s Submission to the Committee of Ministers of the Council of Europe on developments in the management of asylum and reception in Greece*, May 2017, 10.

<sup>701</sup> Article 46(4)(a) L 4375/2016.

<sup>702</sup> GCR, Document Nos 696/2016 and 697/2016.

<sup>703</sup> Article 30(5) L 3907/2011.

<sup>704</sup> Article 30(6) L 3907/2011.

## C. Detention conditions

### 1. Place of detention

#### Indicators: Place of Detention

1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)?  Yes  No
2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure?  Yes  No

#### 1.1. Pre-removal detention centres

According to Article 46(9) L 4375/2016, asylum seekers are detained in detention areas as provided in Article 31 L 3907/2011, which refers to pre-removal detention centres established in accordance with the provisions of the Returns Directive. Therefore asylum seekers are also detained in pre-removal detention centres together with third-country nationals under removal procedures. Despite the fact that pre-removal detention centres have been operating since 2012, they were officially established through Joint Ministerial Decisions in January 2015.<sup>705</sup>

Eight pre-removal detention centres were active at the end of 2017, compared to six in 2016. A ninth pre-removal centre has been legally established on **Samos** but is not yet operational. The total pre-removal detention capacity is 6,627 places, up from 5,215 places in 2016. According to information provided to GCR by the Hellenic Police, the capacity of the pre-removal detention facilities is as follows:

Capacity of pre-removal detention centres			
Centre	Region	Establishing act	Capacity
Amygdaleza	Attica	Joint Ministerial Decision 8038/23/22-ιγ', Gov. Gazette B' 118/21.1.2015; Joint Ministerial Decision 8038/23/22-να', Gov. Gazette B' 2952/31.12.2015	2,000
Tavros (Petroi Ralli)	Attica	Joint Ministerial Decision 8038/23/22-ιγ', Gov. Gazette B' 118/21.1.2015; Joint Ministerial Decision 8038/23/22-να', Gov. Gazette B' 2952/31.12.2015	340
Corinth	Peloponnese	Joint Ministerial Decision 8038/23/22-ιγ', Gov. Gazette B' 118/21.1.2015; Joint Ministerial Decision 8038/23/22-να', Gov. Gazette B' 2952/31.12.2015	1,536
Paranesti, Drama	Thrace	Joint Ministerial Decision 8038/23/22-ιγ', Gov. Gazette B' 118/21.1.2015; Joint Ministerial Decision 8038/23/22-να', Gov. Gazette B' 2952/31.12.2015	977
Xanthi	Thrace	Joint Ministerial Decision 8038/23/22-ιγ', Gov. Gazette B' 118/21.1.2015; Joint Ministerial Decision 8038/23/22-να', Gov. Gazette B' 2952/31.12.2015	480
Fylakio, Orestiada	Thrace	Joint Ministerial Decision 8038/23/22-ιγ', Gov. Gazette B' 118/21.1.2015; Joint Ministerial Decision 8038/23/22-να', Gov. Gazette B' 2952/31.12.2015	374
Lesvos	Eastern Aegean	Joint Ministerial Decision 8038/23/22-ιγ', Gov. Gazette B' 118/21.1.2015; Joint Ministerial Decision 8038/23/22-να', Gov. Gazette B' 2952/31.12.2015	420
Kos	Dodecanese	Joint Ministerial Decision 8038/23/22-ξε, Gov. Gazette B' 332/7.2.2017; Joint Ministerial Decision 8038/23/22-οε', Gov. Gazette B' 4617/28.12.2017	500
Samos	Eastern Aegean	Joint Ministerial Decision 3406/2017, Gov. Gazette B' 2190/27.6.2017	300

<sup>705</sup> Joint Ministerial Decision 8038/23/22-ιγ on the creation and functioning of Pre-removal Centres of Detention of Foreigners, and their regulations, Gov. Gazette 118/B/21-1-2015, available at: <http://bit.ly/2kTWzKX>.



<b>Total</b>		<b>5,215</b>
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Source: Directorate of the Hellenic Police, 29 January 2018.

## 1.2. Police stations and special detention facilities

Apart from the aforementioned pre-removal facilities, and despite commitments from the Greek authorities to phase out such practices, third-country nationals including asylum seekers are also detained in police stations and special holding facilities during 2017, as confirmed *inter alia* by GCR visits.

The only available data on police stations concerns the Eastern Aegean islands:

Detention capacity and occupancy of police stations on the islands		
Police station	Capacity	Occupancy at end 2017
Lesvos	40	5
Chios	18	29
Samos	24	25
Leros	6	1
Kos	35	2
Rhodes	63	28

Source: National Coordination Centre for Border Control, Immigration and Asylum: <http://bit.ly/2o1jjvV>.

Throughout 2017, GCR has found in a number of cases that police stations and special holding facilities operating usually inside the buildings of the Police Directorates were used for prolonged immigration detention. In 2017, GCR has visited more than 20 police stations and special holding facilities where third-country nationals were detained:

- **Attica:** police stations *inter alia* in Athens International Airport, Drapetsona, Elliniko, Pagrati, Ilioupoli, Argiroupoli, Omonia, Ampeliokipi, Agios Panteleimona;
- **Northern Greece:** police stations *inter alia* in Transfer Directorate (*Μεταγωγών*), Thermi, Agiou Athanasiou, Idomeni, Evzonoï, Raidestou;
- **Western Greece:** 3rd Patras Police Station, Patras Police Directorate, Igoumenitsa Coast Guard Facility;
- **Eastern Aegean islands:** police stations *inter alia* on Rhodes, Lesvos, Chios and Samos.

In a June 2017 written intervention to the authorities, GCR reported 14 cases of persons detained in police stations for a period ranging from 20 days to 6 months, in substandard conditions i.e. poor sanitary conditions, no outdoor access, no natural light, no provision of clothing or sanitary products, insufficient food, lack of medical services, no interpretation services.<sup>706</sup>

“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”, as highlighted by the Ombudsman.<sup>707</sup>

As stated in [Grounds for Detention](#), detention is also *de facto* applied in the RIC of **Fylakio**.

<sup>706</sup> GCR, Document No 318/2017.

<sup>707</sup> Ombudsman, *Migration flows and refugee protection: Administrative challenges and human rights*, April 2017, 59.

## 2. Conditions in detention facilities

### Indicators: Conditions in Detention Facilities

1. Do detainees have access to health care in practice?  Yes  Limited  No  
❖ If yes, is it limited to emergency health care?<sup>708</sup>  Yes  No

The law sets out certain special guarantees on detention conditions for asylum seekers. Notably, detainees must be provided with necessary medical care, and their right to legal representation should be guaranteed.<sup>709</sup> In any event, according to the law, “difficulties in ensuring decent living conditions... shall be taken into account when deciding to detain or to prolong detention.”<sup>710</sup>

However, as it has been consistently reported by a range of actors, detention conditions for third-country nationals, including asylum seekers, do not meet the basic standards in Greece.

The Decision adopted by the Council of Europe Committee of Ministers in June 2017 within the framework of the execution of the *M.S.S. v. Belgium and Greece* judgment invited the Greek authorities “to improve conditions of detention in *all* detention facilities where irregular migrants and asylum seekers are detained, including by providing adequate health-care services.”<sup>711</sup>

In September 2017 the CPT issued its report (“2016 report”) regarding its visits to Greece in April and July 2016.<sup>712</sup> As stated by the CPT: “Regrettably, the findings of the July 2016 visit indicate that the situation of foreign nationals deprived of their liberty under aliens’ legislation has not improved.”<sup>713</sup> These findings also demonstrate the fact that recommendations made by monitoring bodies and international organisations are not properly implemented.

### 2.1. Conditions in pre-removal centres

#### Overall material conditions

GCR regularly visits the **Tavros** (Petrou Ralli), **Amygdaleza**, **Corinth**, **Paranesti** (Drama) and **Xanthi** pre-removal facilities and detention facilities on the islands depending on needs and availability of resources. According to GCR findings, as corroborated by national and international bodies, conditions in pre-removal detention facilities remain substandard and are not in line with national and international law. This stresses a structural and long-lasting failure of the Greek authorities to guarantee adequate detention conditions in line with international standards and their legal obligations.

For example, as stated by UNHCR in May 2017:

“Although there have been some improvements in the material conditions [of the pre-removal detention facilities] in comparison to the police stations, there is still a lack of proper maintenance... in all pre-removal detention centers provision of services of psychosocial support, medical care and legal assistance were discontinued in June 2015. Moreover, from UNHCR’s observations during monitoring visits, provision of information to all detainees in pre-removal detention facilities in a language that they understand continues to be deficient due to

<sup>708</sup> Medical doctors, when available, are not daily present in all centres. However, in case of emergency, detainees are transferred to public hospitals.

<sup>709</sup> Article 46(10)(d) and (e) L 4375/2016.

<sup>710</sup> Article 46(8) L 4375/2016.

<sup>711</sup> Council of Europe Committee of Ministers, *1288<sup>th</sup> meeting – H46-15 M.S.S. and Rahimi groups v. Greece* (Application No. 30696/09), CM/Del/Dec(2017)1288/H46-15, 7 June 2017, available at: <http://bit.ly/2Etw8Fv>.

<sup>712</sup> CPT, *Report to the Greek Government on the visits to Greece carried out by the CPT from 13 to 18 April and 19 to 25 July 2016*, CPT/Inf (2017) 25, 26 September 2017 (hereafter “2016 report”), available at: <http://bit.ly/2Fktu5U>.

<sup>713</sup> *Ibid*, para 51.

the lack of interpreters and translation of the administrative decisions in a language they understand. Despite the fact that access to open air and courtyards has improved in most facilities, recreation and leisure activities are still limited. Insufficient heating and cooling in some of these detention centers also affects their health.”<sup>714</sup>

In this regard, the Ombudsman has underlined that 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... in every detention site, the detainees were deprived of basic interpretation services... 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.”<sup>715</sup>

The CPT has long criticised the detention conditions in pre-removal detention facilities. As underlined in the CPT 2015 report, issued in 2016,<sup>716</sup> the Greek authorities have failed to implement the CPT recommendations put forward in its 2013 report. In the same report, the CPT stated that the conditions at **Petrou Ralli** remained totally inadequate for holding irregular migrants for prolonged periods, and the made recommendations to remedy the poor material conditions and lack of activities.<sup>717</sup> In its 2016 report, the CPT noted that the “findings of the July 2016 visit indicate that the situation has not improved.”<sup>718</sup> It should be noted that the Tavros (Petrou Ralli) pre-removal facility is still in use.

Moreover, structural problems related to the functioning of pre-removal facilities raised by the CPT persist. The situation has not improved since the 2015 CPT report where it was noted:

“In sum, the concept for the operation of pre-departure centres still remains based on a security approach with detainees treated in many respects as criminal suspects... The centres are not staffed by properly trained officers, present within the accommodation areas, interacting with detained irregular migrants and taking a proactive role to resolve potential problems. Further, no activities are offered and material conditions are generally poor. In addition, the lack of any healthcare staff represents a public health risk in addition to jeopardising the health of individual detained persons.”<sup>719</sup>

In addition, in February 2017, GCR found that the amount of living space in **Corinth** is less than 3m<sup>2</sup> per person and that people are accommodated in dormitories each measuring 35m<sup>2</sup>, with six sets of bunk beds for 12 persons.<sup>720</sup> Families with children and unaccompanied children have been detained throughout 2017 in **Amygdaleza**, a security facility without any specialised infrastructure to address the needs of families with children and unaccompanied children.<sup>721</sup> In December 2017, GCR found that, men, women and a single-parent families with minor children in **Kos** pre-removal centre were detained together in the same section,<sup>722</sup> despite the fact that authorities have to “ensure that women are detained in an area separately from men”.<sup>723</sup>

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<sup>714</sup> UNHCR, *Explanatory Memorandum to UNHCR’s Submission to the Committee of Ministers of the Council of Europe on developments in the management of asylum and reception in Greece*, May 2017, 11.

<sup>715</sup> Ombudsman, *Migration flows and refugee protection: Administrative challenges and human rights*, April 2017, 57.

<sup>716</sup> CPT, *Report to the Greek Government on the visit to Greece carried out by the CPT from 14 to 23 April 2015*, CPT/Inf (2016) 4, 1 March 2016 (hereafter “2015 report”), available at: <http://bit.ly/2EKrJCd>.

<sup>717</sup> Ombudsman, *Migration flows and refugee protection: Administrative challenges and human rights*, April 2017, 57.

<sup>718</sup> CPT, *2016 report*, para 8.

<sup>719</sup> CPT, *2015 report*, para 113.

<sup>720</sup> GCR, Document No 319/2017.

<sup>721</sup> GCR, Document No 491/2017.

<sup>722</sup> GCR, Document No 702/2017.

<sup>723</sup> Article 46(9)(a) L 4375/2016.

## Health care in detention

The provision of medical services in pre-removal detention facilities remained an issue of concern in 2017 as no permanent medical staff was present.<sup>724</sup> Medical services were mainly provided by the staff of the Hellenic Centre for Disease Control and Prevention (KEELPNO) or the staff of local public hospitals who visited the facilities periodically. For example, in **Corinth**, where about 650 persons were detained in December 2017, doctors were visiting the centre only three times a week and the persons detained complained that access to medical services was particularly limited.<sup>725</sup> In **Kos**, on the other hand, no medical services were provided in December 2017.<sup>726</sup>

In 2017, the provision of medical services in pre-removal detention centres was transferred under the responsibility of the Ministry of Health, and in particular under the Health Unit SA (*Ανώνυμη Εταιρεία Μονάδων Υγείας*, AEMY), a public limited company under the supervision of Ministry of Health.<sup>727</sup> A vacancy notice was issued in November 2017 *inter alia* for 20 doctors, 9 psychiatrists, 45 nurses to be hired.<sup>728</sup> As mentioned by the Directorate of the Hellenic Police, the provision of medical services under this scheme has partially started since January 2018,<sup>729</sup> and thus its results should be further assessed.

## 2.2. Conditions in police stations and other facilities

Detention conditions in police stations and other detention facilities remain equally concerning. It should be noted that prolonged detention in police stations *per se* is not in line with the Greek legal framework and the obligations of the Greek authorities under Article 3 ECHR.<sup>730</sup>

As mentioned in *Place of Detention*, GCR has visited 20 police stations and detention facilities inside the Police Directorate buildings in 2017. The lack of open air exercise and yarding, unsanitary conditions, absence of doctors, lack of natural light and ventilation are among the common findings in these places of detention. These findings are also corroborated by UNHCR and the Ombudsman.<sup>731</sup>

Overcrowding is also a crucial problem. For example, in March 2017, 62 people were reported to be detained in the police station of **Kos**, which has capacity for 22 persons.<sup>732</sup> In September 2017, 120 persons were detained in the police station of **Rhodes** with a reported capacity of 40 places at that time.<sup>733</sup> Amnesty International has also reported the case of a 21-year-old Syrian asylum seeker who remained detained in the police station of **Lesvos** for seven months in order to be readmitted to Turkey.<sup>734</sup>

Unaccompanied children and other vulnerable persons are also detained in police stations. For example, in July 2017 the Ombudsman found a significant number of unaccompanied children detained

<sup>724</sup> CPT, *2016 report*, para 61: “the CPT recommends that... a doctor and at least one nurse are present every day, including on weekends.”

<sup>725</sup> GCR, Document No 319/2017.

<sup>726</sup> GCR, Document No 702/2017.

<sup>727</sup> Article 47(1) L 4461/2017.

<sup>728</sup> AEMY, *Πρόσκληση εκδήλωση ενδιαφέροντος*, No 5892, 10 October 2017, available in Greek at: <http://bit.ly/2sywuc3>.

<sup>729</sup> Information provided by the Directorate of the Hellenic Police, 29 January 2018.

<sup>730</sup> See e.g. ECtHR, *Ahmade v. Greece*, Application No 50520/09, Judgment of 25 September 2012, para 101.

<sup>731</sup> UNHCR, *Explanatory Memorandum to UNHCR's Submission to the Committee of Ministers of the Council of Europe on developments in the management of asylum and reception in Greece*, May 2017, 11; Ombudsman, *Migration flows and refugee protection: Administrative challenges and human rights*, April 2017, 77.

<sup>732</sup> Dimokratiki, ‘Ασφυξία στα κρατητήρια του ΑΤ Κω’, 16 March 2017, available in Greek at: <http://bit.ly/2sK6Ml6>.

<sup>733</sup> Dimokratiki, ‘Μετανάστες στα κρατητήρια της Ρόδου’, 18 November 2017, available in Greek at: <http://bit.ly/2HyocET>.

<sup>734</sup> Amnesty International, ‘Να απελευθερωθεί άμεσα ο Noori από παράνομη κράτηση’, 29 March 2017, available in Greek at: <http://bit.ly/2rQGFlp>.

in police stations in Northern Greece. Among others the Ombudsman mentioned the case of 17 children, most of them aged around 15, detained in one cell of 25m<sup>2</sup> where mattresses without sheets covered almost the entire floor area in the Department of Illegal Immigration in **Mygdonia**.<sup>735</sup>

In relation to health care, it should be mentioned that the aforementioned November 2017 vacancy notice for medical services only concerns pre-removal detention centres and do not cover persons detained in police stations.

Finally, as regards the Police Directorate at **Athens International Airport**, among other concerns, no place for outdoor exercise and/or yarding is available in the holding facility. According to the CPT the facility is unsuitable for detaining persons for longer than 24 hours.<sup>736</sup>

### 3. Access to detention facilities

#### Indicators: Access to Detention Facilities

1. Is access to detention centres allowed to

- |                   |   |   |                             |
|-------------------|---|---|-----------------------------|
| ❖ Lawyers:        | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited            | <input type="checkbox"/> No |
| ❖ NGOs:           | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ UNHCR:          | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited            | <input type="checkbox"/> No |
| ❖ Family members: | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |

NGOs' capacity to access detainees in practice is limited due to human and financial resource constraints. Another major practical barrier to asylum seekers' communication with NGOs is that they do not have access to free telephone calls. Therefore access *inter alia* with NGOs is limited in case they do not have the financial means to buy a telephone card. Moreover, it should be noted that in a number of detention facilities such as **Tavros** people are not allowed to use their mobile phones, while in others such as **Lesvos** the use of mobile phones is restricted to twice per week, thus restricting their ability to communicate.

Family members' access is also restricted due to limited visiting hours and the remote location of some detention facilities.

## D. Procedural safeguards

### 1. Judicial review of the detention order

#### Indicators: Judicial Review of Detention

- |   |   |                             |
|---|---|-----------------------------|
| 1. Is there an automatic review of the lawfulness of detention? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. If yes, at what interval is the detention order reviewed?    | Not specified                           |                             |

#### 1.1. Automatic judicial review

L 4375/2016 has introduced a procedure of automatic judicial review of the decisions ordering or prolonging the detention of an asylum seeker. The procedure is largely based on the procedure already in place for the automatic judicial review of the extension of detention of third-country nationals in view of return.<sup>737</sup>

<sup>735</sup> Ombudsman, 'Unacceptable conditions for the detention of unaccompanied minors in Northern Greece', 31 July 2017, available at: <http://bit.ly/2sHZzIL>.

<sup>736</sup> CPT, 2016 report, para 59.

<sup>737</sup> Article 30(3) L 3907/2011.

Article 46(5) L 4375/2016 reads as follows:

“The initial detention order and the order for the prolongation of detention shall be transmitted to the President of the Administrative Court of First Instance, or the judge appointed thereby, who is territorially competent for the applicant’s place of detention and who decides on the legality of the detention measure and issues immediately his decision, in a brief record... In case this is requested, the applicant or his/her legal representative must mandatorily be heard in court by the judge. This can also be ordered, in all cases, by the judge.”

As stated by UNHCR in relation to the *ex officio* judicial review of the detention order, “in practice, asylum-seekers do not have effective access to this review due to a lack of interpretation, legal assistance and limited capacity of the Administrative Courts.”<sup>738</sup>

Moreover in addition to concerns expressed in previous years as to the effectiveness of this procedure,<sup>739</sup> it should be noted that the statistical data on the outcome of *ex officio* judicial scrutiny are highly problematic and illustrate the rudimentary and ineffective way in which this judicial review takes place. According to the available data regarding detention orders for asylum seekers examined by the Administrative Court of Athens, there has not been a single case where the *ex officio* review did not approve the detention measure imposed:

<b>Ex officio review of detention by the Administrative Court of Athens: 2017</b>		
	under asylum provisions (Article 46 L 4375/2016)	under pre-removal provisions (Article 30 L 3907/2011)
Detention orders transmitted	423	121
Approval of detention order	421	9
No approval of detention order	0	0
Abstention from decision	2	112

Source: Administrative Court of Athens, 18 January 2018.

“Abstention from decision” in L 4375/2016 cases concerns detention orders transmitted after the expiry of the time limit. For L 3907/2011 cases, according to its interpretation of the law, the Court examines the lawfulness of detention only if detention is prolonged beyond 6 months. Therefore, if detention is prolonged after an initial 3 months up to 6 months, the Court abstains from issuing a decision.

## 1.2. Objections against detention

Apart from the automatic judicial review procedure, asylum seekers may challenge detention through “objections against detention” before the Administrative Court,<sup>740</sup> which is the only legal remedy provided by national legislation to this end. Objections against detention are not examined by a court composition but solely by the President of the Administrative Court, whose decision is non-appealable. However, in practice the ability of detained persons to challenge their detention is severely restricted by the fact that “migrants in pre-removal detention centres are often unaware of their legal status and do not know about the possibility of challenging their detention”,<sup>741</sup> the lack of interpreters and translation of

<sup>738</sup> UNHCR, *Explanatory Memorandum to UNHCR’s Submission to the Committee of Ministers of the Council of Europe on developments in the management of asylum and reception in Greece*, May 2017, 10.

<sup>739</sup> UN Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants, Addendum: Mission to Greece*, 18 April 2013, A/HRC/23/46/Add.4, available at: <http://bit.ly/2kZ7D8R>, para 57.

<sup>740</sup> Article 46(6) L 4375/2016, citing Article 76(3)-(4) L 3386/2005.

<sup>741</sup> UN Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants, Addendum: Mission to Greece*, 18 April 2013, A/HRC/23/46/Add.4, available at: <http://bit.ly/2kZ7D8R>, para 49.



the administrative decisions in a language they understand<sup>742</sup> and the lack of free [Legal Assistance for Review of Detention](#).

In a recent ECtHR judgment regarding the case of 3 Afghan nationals detained on Chios in March 2016, who had not submitted objections against their detention before applying to the ECtHR, the Court rejected the preliminary objection of the Government regarding the non-exhaustion of domestic remedies and ruled that the applicant did not have access to a legal remedy.<sup>743</sup> The Court *inter alia* took into consideration the following elements: the detention orders were written in Greek even though the applicants were Farsi speakers;<sup>744</sup> the information brochure provided to them did not mention which was the competent court in order to submit a legal remedy; the competent court was located in another island (Lesvos);<sup>745</sup> and there was no legal assistance.<sup>746</sup>

Moreover, the ECtHR has found on various occasions the objections procedure to be an ineffective remedy, contrary to Article 5(4) ECHR,<sup>747</sup> as the lawfulness *per se* of the detention, including detention conditions, was not examined in that framework. In order to bring national law in line with ECHR standards, legislation was amended in 2010. However, the ECtHR has found in a number of cases that, despite the amendment of the Greek law, the lawfulness of applicants' detention had not been examined in a manner equivalent to the standards required by Article 5(4) ECHR.<sup>748</sup> This case law of the ECtHR illustrates that the amendment of national legislation cannot itself guarantee an effective legal remedy in order to challenge immigration detention, including the detention of asylum seekers.

As far as the judicial review of detention conditions is concerned, based on the cases supported by GCR, it seems that courts tend either not to take complaints into consideration or to reject them as unfounded, even against the backdrop of numerous reports on substandard conditions of detention in Greece, brought to their attention.

Moreover, based on the cases supported by GCR, it also seems that this procedure may also be marked by a lack of legal security and predictability, which is aggravated by the fact that no appeal stage is provided in order to harmonise and/or correct the decisions of the Administrative Courts. GCR has supported a number of cases where the relevant Administrative Courts' decisions were contradictory, even though the facts were substantially the same. This is for example the case of people who express their will to apply for asylum while in detention and remain in pre-removal detention until the full registration of their application, even though they are deemed asylum seekers from the moment they make an application under Greek law. In a number of decisions, the Administrative Court of **Komotini** accepted the objections and ordered the applicant's release due to the making of an asylum application.<sup>749</sup> In other cases, however, the same court ruled that the authorities only have an obligation

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<sup>742</sup> UNHCR, *Explanatory Memorandum to UNHCR's Submission to the Committee of Ministers of the Council of Europe on developments in the management of asylum and reception in Greece*, May 2017, 11.

<sup>743</sup> ECtHR, *J.R. and Others v. Greece*, Application No 22696/16, Judgment of 25 January 2018, para 99.

<sup>744</sup> *Ibid*, para 100.

<sup>745</sup> *Ibid*, paras 100-101.

<sup>746</sup> *Ibid*, para 102.

<sup>747</sup> See e.g. ECtHR, *Rahimi v. Greece* Application No 8687/08, Judgment of 5 April 2011; *R.U. v. Greece* Application No 2237/08, Judgment of 7 June 2011; *CD v Greece* Application No 33468/10, Judgment of 19 March 2014.

<sup>748</sup> ECtHR, *R.T. v. Greece*, Application no 5124/11, Judgment of 11 February 2016; *Mahammad and others v. Greece*, Application No 48352/12, January 15 January 2015; *MD v. Greece*, Application No 60622/11, Judgment of 13 November 2014; *Housein v. Greece*, Application No 71825/11, Judgment of 24 October 2013. In the case *F.H. v. Greece*, Application No 78456/11, Judgment of 31 July 2014, the Court found a violation of Article 3 combined with Article 13, due to lack of an effective remedy in the Greek context in order to control detention conditions.

<sup>749</sup> See e.g. Administrative Court of Komotini, Decision 349/2017; Decision 361/2017; Decision 362/2017; Decision 363/2017; Decision 365/2017.

to issue an asylum detention order under Article 46 L 4375/2016 after the full registration of the asylum application, and consequently rejected the objections against detention.<sup>750</sup>

## 2. Legal assistance for review of detention

### Indicators: Legal Assistance for Review of Detention

1. Does the law provide for access to free legal assistance for the review of detention?  
 Yes  No
2. Do asylum seekers have effective access to free legal assistance in practice?  
 Yes  No

Article 46(7) L 4375/2016 provides that “detainees who are applicants for international protection shall be entitled to free legal assistance and representation to challenge the detention order...”

In practice, no free legal aid system has been set up in order an asylum seeker to challenge his or her detention. Free legal assistance for detained asylum seekers provided by NGOs cannot sufficiently address the needs and in any event cannot exempt the Greek authorities from their obligation to provide free legal assistance and representation to asylum seekers in detention, as foreseen by the recast Reception Conditions Directive.<sup>751</sup> As stated by the United Nations Special Rapporteur on the human rights of migrants, “legal aid in immigration detention facilities provided by non-governmental organizations (NGOs) is scarce due to funding shortages.”<sup>752</sup>

## E. Differential treatment of specific nationalities in detention

As mentioned in the **General** section, a so-called “pilot project” / “low rate scheme” is implemented on Lesbos, under which newly arrived persons belonging to particular nationalities with low recognition rates, are immediately placed in detention upon arrival and remain there for the entire asylum procedure.<sup>753</sup> Since March 2017, this includes 28 nationalities.

Since November 2017, a practice of detention of Syrian nationals upon arrival is reported on Lesbos and Chios, subject to availability of detention places.<sup>754</sup>

<sup>750</sup> See e.g. Administrative Court of Komotini, Decision 852/2017; Decision 853/2017; Decision 855/2017; Decision 861/2017; Decision 862/2017.

<sup>751</sup> Article 9(6) recast Reception Conditions Directive.

<sup>752</sup> Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants on his mission to Greece*, 24 April 2017, para 49.

<sup>753</sup> ECRE, ‘Asylum procedure based on nationality rather than on merit – the situation of Pakistani asylum applicants under the EU Turkey Deal’, 8 December 2017, available at: <http://bit.ly/2kEjTk1>; ActionAid et al., *Transitioning to a government-run refugee and migrant response in Greece*, December 2017, available at: <http://bit.ly/2DsdwCC>, 5; Independent, ‘gees held at Lesbos detention centre resorting to self-harm to escape “poor living conditions”’, 23 September 2017, available at: <https://ind.pn/2E7ZuNm>.

<sup>754</sup> Refugee Support Aegean, ‘Detention as a deterrent’, 15 March 2018, available at: <http://bit.ly/2ptTHbz>.

### A. Status and residence

#### 1. Residence permit

##### Indicators: Residence Permit

1. What is the duration of residence permits granted to beneficiaries of protection?
  - ❖ Refugee status 3 years
  - ❖ Subsidiary protection 3 years
  - ❖ Humanitarian protection 2 years

Individuals recognised as refugees or beneficiaries of international protection are granted with a 3-year residence permit, which can be renewed, after a decision of the Head of the Regional Asylum Office.<sup>755</sup> In practice, residence permits are usually delivered 1-2 months after the notification of the positive decision. Until then, applicants hold the asylum seeker card, stamped with the mention “Pending Residence Permit”.<sup>756</sup>

An application for renewal should be submitted no later than 30 calendar days before the expiry of the residence permit. The mere delay in the application for renewal, without any justification, cannot lead to the rejection of the application. Since 2017, the application for renewal is submitted via email to the Asylum Service.<sup>757</sup> The renewal decision is notified to the applicant only via email. Accordingly, bearing in mind that legal aid is not provided at this stage, technologically illiterate beneficiaries of international protection can face obstacles while applying for the renewal of their permit.

According to the information provided by the Asylum Service the renewal procedure lasts approximately 2 months.<sup>758</sup> However, as far as GCR is aware, the Asylum Service faces longer delays which can reach 6 months in practice due to high number of applicants. During this procedure the Legal Unit of the Asylum Service processes criminal record checks on the beneficiaries of international protection, which may lead to the **Withdrawal** of their protection status. Pending the issuance of a new residence permit, beneficiaries of international protection are granted a certificate of application (*βεβαίωση κατάστασης αιτήματος*) which is valid for two months. In practice, beneficiaries whose residence permit has expired and who hold this document while awaiting the renewal of their residence permit have faced obstacles in accessing services such as social welfare.<sup>759</sup> The Asylum Service sent a letter to the Ministry of Labour on 11 December 2017 to clarify that the certificate of application constitutes valid documentation to certify a person’s international protection status.<sup>760</sup>

In 2017, the Asylum Service received 1,137 applications for renewal and issued 809 positive renewal decisions.<sup>761</sup>

For those granted international protection under the “old procedure” prescribed by PD 114/2010, the renewal procedure is conducted by the Aliens Division of the Athens Regional Department (*Διεύθυνση Αλλοδαπών Αττικής*). Within the framework of this procedure, the drafting of a legal document for the

<sup>755</sup> Article 24 PD 141/2013.

<sup>756</sup> Asylum Service, *Frequently asked questions on the rights of asylum seekers and beneficiaries of international protection*, 18 February 2015, available in Greek at: <http://bit.ly/2jGtlw0>.

<sup>757</sup> Asylum Service, *Residence permit – Renewal*, available at: <http://bit.ly/2xlzUXb>.

<sup>758</sup> Information provided by the Asylum Service, 15 February 2018.

<sup>759</sup> Generation 2.0, ‘Ανανέωση αδειών διαμονής δικαιούχων διεθνούς προστασίας: Επιστολή στο Υπουργείο Εργασίας’, 20 December 2017, available in Greek at: <http://bit.ly/2BoghdB>.

<sup>760</sup> Asylum Service, Letter to the Ministry of Labour and the Ministry of Administrative Reconstruction, No 20864, 11 December 2017, available in Greek at: <http://bit.ly/2D5CsS1>.

<sup>761</sup> Information provided by the Asylum Service, 15 February 2018.

renewal application is required. The decision is issued after a period of approximately 3-6 months, as delays are also reported in practice.<sup>762</sup> In 2017 there were 349 renewal applications submitted before the Aliens Division and 337 positive decisions were issued.<sup>763</sup>

## 2. Civil registration

According to Article 20(1) L 344/1976, the birth of a child must be declared within 10 days to the Registry Office of the municipality where the child was born.<sup>764</sup> The required documents for this declaration are: a doctor's or midwife's verification of the birth; and the residence permit of at least one of the parents. A deferred statement is accepted by the registrar but the parent must pay a fee of up to €100 in such a case.<sup>765</sup>

A marriage must be declared within 40 days at the Registry Office of the municipality where it took place; otherwise the spouses must pay a fee of up to €100.<sup>766</sup> In order to get legally married in Greece, the parties must provide a birth certificate and a certificate of celibacy from their countries of origin.<sup>767</sup> For recognised **refugees**, due to the disruption of ties with their country of origin, the Ministry of Interior has issued general orders to the municipalities to substitute the abovementioned documents with an affidavit of the interested party.<sup>768</sup> However, asylum seekers and beneficiaries of **subsidiary protection** are still required to present such documentation which is extremely difficult to obtain, and are thus excluded from the right to marriage and the right to private and family life. Nevertheless, in a ruling of 13 July 2017 concerning an asylum seeker, the County Court of Mytilene acknowledged the disruption of ties with the country of origin and allowed her to register a marriage by providing an affidavit *in lieu* of the birth certificate and certificate of celibacy.<sup>769</sup>

Civil registration affects the enjoyment of certain rights of beneficiaries of international protection. For instance, a birth certificate or a marriage certificate are required to prove family ties in order to be recognised as a family member of a beneficiary of international protection and to be granted a similar residence permit according to Article 24 PD 141/2013 (see [Status and Rights of Family Members](#)).

In practice, the main difficulties faced by beneficiaries with regard to civil registration are the language barrier and the absence of interpreters at the Registration Offices of the municipalities. This lack leads to errors in birth or marriage certificates, which are difficult to correct and require a court order.

## 3. Long-term residence

### Indicators: Long-Term Residence

1. Number of long-term residence permits issued to beneficiaries in 2017: Not available

According to Article 89 of the Immigration Code, third-country nationals are eligible for long-term residence if they have resided in Greece lawfully for 5 consecutive years before the application is filed. For beneficiaries of international protection, the calculation of the 5-year residence period includes half of the period between the lodging of the asylum application and the grant of protection, or the full period

<sup>762</sup> Generation 2.0, 'Καθυστερήσεις στις Άδειες Διαμονής | Δελτίο Τύπου', 3 January 2018, available in Greek at: <http://bit.ly/2196pEc>.

<sup>763</sup> Information provided by the Aliens Division of the Athens Regional Department, January 2018.

<sup>764</sup> L 344/1976 on Civil Registration Acts, Official Gazette 143/A/11.6.1976.

<sup>765</sup> Article 49 L 344/1976.

<sup>766</sup> Article 29 L 344/1976.

<sup>767</sup> Article 1(3) PD 391/1982.

<sup>768</sup> See e.g. Ministry of Interior, General Orders to municipalities 4127/13.7.81, 4953/6.10.81 and 137/15.11.82.

<sup>769</sup> HIAS, 'HIAS Greece Secures First Civil Marriage License For Syrian Refugees', 27 July 2017, available at: <http://bit.ly/2vaSzO0>.

if the asylum procedure exceeded 18 months.<sup>770</sup> Absence periods are not taken into account for the determination of the 5-year period, provided that they do not exceed 6 consecutive months and 10 months in total, within the 5-year period.<sup>771</sup>

To be granted long-term resident status, beneficiaries of international protection must also fulfil the following conditions:<sup>772</sup>

- (a) Sufficient income to cover their needs and the needs of their family and is earned without recourse to the country's social assistance system. This income cannot be lower than the annual income of an employee on minimum wage, pursuant to national laws, increased by 10% for all the sponsored family members, also taking into account any amounts from regular unemployment benefits. The contributions of family members are also taken into account for the calculation of the income;
- (b) Full health insurance, providing all the benefits provided for the equivalent category of insured nationals, which also covers their family members;
- (c) Fulfilment of the conditions indicating integration into Greek society, *inter alia* "good knowledge of the Greek language, knowledge of elements of Greek history and Greek civilisation".<sup>773</sup>

#### 4. Naturalisation

##### Indicators: Naturalisation

1. What is the waiting period for obtaining citizenship?	
❖ Refugee status	3 years
❖ Subsidiary protection	7 years
2. Number of citizenship grants to third-country nationals in 2017:	3,483

##### 4.1. Conditions for citizenship

According to the Citizenship Code,<sup>774</sup> citizenship may be granted to a foreigner who:

- (a) Has reached the age of majority by the time of the submission of the declaration of naturalisation;
- (b) Has not been irrevocably convicted of a number of crimes committed intentionally in the last 10 years, with a sentence of at least one year or at least 6 months regardless of the time of the issuance of the conviction decision. Conviction for illegal entry in the country does not obstruct the naturalisation procedure.
- (c) Has no pending deportation procedure or any other issues with regards to his or her status of residence;
- (d) Has lawfully resided in Greece for 7 continuous years before the submission of the application. A period of 3 years of lawful residence is sufficient in case of recognised **refugees**. This is not the case for **subsidiary protection beneficiaries**, who should prove a 7-year lawful residence as per the general provisions;
- (e) Hold one of the categories of residence permits foreseen in the Citizenship Code, *inter alia* long-term residence permit, residence permit granted to recognised refugees or subsidiary protection beneficiaries, or second generation residence permit.

Applicants should also have: (1) sufficient knowledge of the Greek language; (2) be normally integrated in the economic and social life of the country; and (3) be able to actively participate in political life.<sup>775</sup> A

<sup>770</sup> Article 89(2) L 4251/2014 (Immigration Code).

<sup>771</sup> Article 89(3) Immigration Code.

<sup>772</sup> Article 89(1) Immigration Code.

<sup>773</sup> Article 90(2)(a) Immigration Code.

<sup>774</sup> Article 5 L 3284/2004 (Citizenship Code).

<sup>775</sup> Article 5A Citizenship Code.

book with information on Greek history, civilisation, geography etc. is issued by the Ministry of Interior and dedicated to foreigners willing to apply for naturalisation.<sup>776</sup>

While a refugee can apply for the acquisition of citizenship 3 years after recognition, its acquisition requires a demanding examination procedure in practice. More specifically, applicants for naturalisation face wide disparities in the depth and level of difficulty of examinations depending on the Naturalisation Committee examining their application. Against that backdrop, the Ministry of Interior issued a Circular on 12 December 2017 to harmonise naturalisation examinations.<sup>777</sup> In addition, the Ministry has recently announced that a legislative reform will be introduced with a view to introducing a new examination system, consisting of 30 questions out of a pool of 300 questions. Candidates will be required to answer at least 20 out of 30 questions correctly.<sup>778</sup>

## 4.2. Naturalisation procedure

A fee of €100 is required for the submission of the application for **refugees**. In the case of beneficiaries of **subsidiary protection**, the fee is €700. A €200 fee is required for the re-examination of the case.

The naturalisation procedure requires a statement to be submitted before the Municipal Authority of the place of permanent residence, and an application for naturalisation to the authorities of the Prefecture.<sup>779</sup> The statement for naturalisation is submitted to the Mayor of the city of permanent residence, in the presence of two Greek citizens acting as witnesses. After having collected all the required documents, the applicant must submit an application before the Decentralised Administration competent Prefecture.

Where the requisite formal conditions of Article 5 of the Immigration Code, such as age or minimum prior residence, are not met, the Secretary-General of the Decentralised Administration issues a negative decision. An appeal can be lodged before the Minister of Interior, within 30 days of the notification of the rejection decision.

In case the required conditions are met, the case file will be forwarded to the Naturalisation Committee. The applicant is invited for an interview, in order for the Committee to examine whether the substantive conditions of Article 5A of the Immigration code i.e. general knowledge of Greek history, geography, and civilisation are met. In case of a positive recommendation by the Naturalisation Committee, the Minister of Interior will issue a decision granting the applicant Greek citizenship, which will be also published in the Government Gazette.

Greek citizenship is acquired following the oath of the person, within a year from the publication of the decision. If the oath is not given while this period, the decision is revoked.

In case of a negative recommendation of the Naturalisation Committee, an appeal can be lodged within 15 days. A Decision of the Minister of Interior will be issued, in case that the appeal is accepted. In case of rejection of the appeal, an application for annulment (*αίτηση ακύρωσης*) can be lodged before the Administrative Court of Appeals within 60 days of the notification of that decision.

The examination procedure is extremely slow and the Naturalisation Committees are now examining applications submitted in 2014, as far as GCR is aware.

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<sup>776</sup> Ministry of Interior, Directorate of Citizenship, *Greece as a Second Homeland: Book of information on Greek history, geography and civilisation*, available in Greek at: <http://bit.ly/2m0lCzO>.

<sup>777</sup> Ministry of Interior, Circular No 3 of 12 December 2017 on "instructions relating to the conduct of interviews", 27/2017, available in Greek at: <http://bit.ly/2FhKHjl>.

<sup>778</sup> In.gr, 'Οι αλλαγές και τα κενά στο σχέδιο νόμου για την ιθαγένεια', 7 March 2018, available in Greek at: <http://bit.ly/2FocZoC>.

<sup>779</sup> Article 6 Citizenship Code.



In 2017 a total of 3,483 foreigners were granted citizenship by way of naturalisation, compared to 3,624 in 2016. This number is not limited to beneficiaries of international protection: the majority of naturalised persons originated from Albania (2,117), followed by Ukraine (139), Moldova (132), Russia (130) and Bulgaria (128). It appears therefore that the number of beneficiaries of international protection acquiring citizenship in 2017 is low. The success rate of naturalisation applications in 2017 was 74.3%, while 895 naturalisation applications were rejected.<sup>780</sup>

Apart from naturalisation of foreign nationals (*αλλογενείς*), Greece also granted citizenship to 3,676 non-nationals of Greek origin (*ομογενείς*) and 24,785 second-generation children i.e. foreign children born in Greece or successfully completing school in Greece.

## 5. Cessation and review of protection status

### Indicators: Cessation

1. Is a personal interview of the beneficiary in most cases conducted in practice in the cessation procedure?  Yes  No
2. Does the law provide for an appeal against the first instance decision in the cessation procedure?  Yes  No
3. Do beneficiaries have access to free legal assistance at first instance in practice?  
 Yes  With difficulty  No

Cessation of international protection is governed by Articles 11 and 16 PD 141/2013.

**Refugee status** cases where the person:<sup>781</sup>

- (a) Voluntarily re-avails him or herself of the protection of the country of origin;
- (b) Voluntarily re-acquires the nationality he or she has previously lost;
- (c) Has obtained a new nationality and benefits from that country's protection;
- (d) Has voluntarily re-established him or herself in the country he or she fled or outside which he or she has resided for fear of persecution;
- (e) May no longer deny the protection of the country of origin or habitual residence where the conditions leading to his or her recognition as a refugee have ceased to exist. The change of circumstances must be substantial and durable,<sup>782</sup> and cessation is without prejudice to compelling reasons arising from past persecution for denying the protection of that country.<sup>783</sup>

Cessation on the basis of changed circumstances also applies to **subsidiary protection** beneficiaries under the same conditions.<sup>784</sup>

Where cessation proceedings are initiated, the beneficiary is informed at least 15 days before the review of the criteria for international protection and may submit his or her views on why protection should not be withdrawn.<sup>785</sup>

Where the person appeals the decision, contrary to the [Asylum Procedure](#), the Appeals Committee is required to hold an oral hearing of the beneficiary in cessation cases.<sup>786</sup>

<sup>780</sup> Ministry of Interior, *Naturalisation statistics 2017*, available in Greek at: <http://bit.ly/2IbBwiz>.

<sup>781</sup> Article 11(1) PD 141/2013.

<sup>782</sup> Article 11(2) PD 141/2013.

<sup>783</sup> Article 11(3) PD 141/2013.

<sup>784</sup> Article 16 PD 141/2013.

<sup>785</sup> Article 63(2) L 4375/2016.

<sup>786</sup> Article 62(1)(a) L 4375/2016, as amended by L 4399/2016.

No systematic difficulties are reported in practice and no cessation procedure is reported to be applied to specific groups. As regards the old asylum procedure applicable prior to 7 June 2013, the Directorate of the Greek Police does not collect statistical data on cessation. The Asylum Service has reported 0 withdrawals of international protection in 2013 and 10 in 2014, but has not published figures for the following years.<sup>787</sup> Up-to-date figures for 2017 are not available.

## 6. Withdrawal of protection status

### Indicators: Withdrawal

1. Is a personal interview of the beneficiary in most cases conducted in practice in the withdrawal procedure?  Yes  No
2. Does the law provide for an appeal against the withdrawal decision?  Yes  No
3. Do beneficiaries have access to free legal assistance at first instance in practice?  Yes  With difficulty  No

Withdrawal of **refugee status** is provided under Article 14 PD 141/2013 where the person:

- (a) Should have been excluded from refugee status;
- (b) The use of false or withheld information, including the use of false documents, was decisive in the grant of refugee status;
- (c) Is reasonably considered to represent a threat to national security; or
- (d) Constitutes a threat to society following a final conviction for a particularly serious crime.

The Asylum Service issued a Circular on 26 January 2018, detailing the application of the ground relating to threat to society following a final conviction for a particularly serious crime.<sup>788</sup>

Under Article 19 PD 141/2013, **subsidiary protection** may be withdrawn where it is established that the person should have been excluded or has provided false information, or omitted information, decisive to the grant of protection.

The procedure described in [Cessation](#) is applicable to withdrawal cases.

## B. Family reunification

### 1. Criteria and conditions

#### Indicators: Family Reunification

1. Is there a waiting period before a beneficiary can apply for family reunification?  Yes  No
  - ❖ If yes, what is the waiting period?
2. Does the law set a maximum time limit for submitting a family reunification application?  Yes  No
  - For preferential treatment regarding material conditions
  - ❖ If yes, what is the time limit? 3 months
3. Does the law set a minimum income requirement?  Yes  No

According to PD 131/2006 transposing the Family Reunification Directive, as supplemented by PD 167/2008 and amended by PD 113/2013, only recognised **refugees** have the right to apply for

<sup>787</sup> Asylum Service, *Statistical data*, available at: [http://asylo.gov.gr/?page\\_id=615](http://asylo.gov.gr/?page_id=615).

<sup>788</sup> Asylum Service, Circular 1/2018 of 26 January 2018, available in Greek at: <http://bit.ly/2rPEkhh>.

reunification with family members who are third-country nationals, if they are in their home country or in another country outside the EU.

As per Article 13 PD 131/2006, “family members” include:

- (a) Spouses;
- (b) Unmarried minor children;
- (c) Unmarried adult children with serious health problems which render them incapable to support themselves;
- (d) Parents, where the beneficiary solemnly declares that he or she has been living with them and taking care of them before leaving his or her country of origin, and that they no longer have other family members to care for and support them;
- (e) Unmarried partners with whom the applicant has a stable relationship, which is proven mainly by the existence of a child or previous cohabitation, or any other appropriate means of proof.

If the refugee is an unaccompanied minor, he or she has the right to be reunited with his or her parents if he or she does not have any other adult relatives in Greece.

If a recognised refugee requests reunification with his or her spouse and/or dependent children, within 3 months from the deliverance of the decision granting him or her refugee status, the documents required with the application are:<sup>789</sup>

- (a) A recent family status certificate, birth certificate or other document officially translated into Greek and certified by a competent Greek authority, proving the family bond and/or the age of family members; and
- (b) A certified copy of the travel documents of the family members.

However, if the applicant cannot provide these certificates, the authorities take into consideration other appropriate evidence.

On the other hand, if the refugee is an adult and the application refers to his or her parents and/or the application is not filed within 3 months from recognition, apart from the documents mentioned above, further documentation is needed:<sup>790</sup>

- (c) Full Social Security Certificate, i.e. certificate from a public social security institution (e.g. IKA, OAEE), proving the applicant’s full social security coverage;
- (d) Tax declaration proving the applicant’s fixed, regular and adequate annual personal income, which is not provided by the Greek social welfare system, and which amounts to no less than the annual income of an unskilled worker – in practice about €8,500 – plus 20% for the spouse and 15% for each parent and child with which he or she wishes to be reunited;
- (e) A certified contract for the purchase of a residence, or a residence lease contract attested by the tax office, or other certified document proving that the applicant has sufficient accommodation to meet the accommodation needs of his or her family.

The abovementioned additional documents are not required in case of an unaccompanied child recognised as refugee, applying for family reunification after the 3-month period after recognition.<sup>791</sup>

Refugees who apply for family reunification face serious obstacles which render the effective exercise of the right to family reunification impossible in practice. Lengthy procedures, administrative obstacles as regards the issuance of visas even in cases where the application for family reunification has been accepted, the requirement of documents which are difficult to obtain by refugees, and lack of

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<sup>789</sup> Article 14(1) PD 131/2006.

<sup>790</sup> Article 14(3) PD 131/2006, citing Article 14(1)(d).

<sup>791</sup> Article 14(3) PD 131/2006, citing Article 14(1)(d).

information on the possibility of family reunification, the three-month deadline and the available remedies are reported among others.<sup>792</sup>

In 2017, 245 applications for family reunification were submitted before the Asylum Service. No further information is available regarding the outcome of these applications.<sup>793</sup> Respectively, 17 applications for family reunification were submitted in 2017 before the Aliens Directorate of Attica of the Hellenic Police (*Διεύθυνση Αλλοδαπών Αττικής*) by applicants recognised as refugees under the “old procedure” in 2017. All of these applications have been rejected.<sup>794</sup>

In February 2018, in a case supported by GCR, the Administrative Court of Athens annulled a decision rejecting the application for family reunification submitted by a refugee before the Aliens Directorate of Attica. The Court found that the rejection of the application had been issued in breach of the relevant legal framework.<sup>795</sup>

Moreover, since 21 October 2016 and until January 2018, only 13 visas of limited territorial validity (VTL) for family members of refugees have been granted in 2017 due to “exceptional humanitarian reasons”, corresponding to 7 positive decisions issued by the Asylum Service.<sup>796</sup>

## 2. Status and rights of family members

According to Article 23 PD 141/2013, as amended by Article 21 L 4375/2016, family members of the beneficiary of international protection who do not individually qualify for such protection are entitled to a renewable residence permit which must have the same duration as that of the beneficiary.

However, in case the family has been formed after entry into Greece, the law requires the spouse to hold a valid residence permit at the time of entry into marriage in order to obtain a family member residence permit.<sup>797</sup> This requirement is difficult to meet in practice and may undermine the right to family life, since one must already have a residence permit in order to qualify for a residence permit as a family member of a refugee.

## C. Movement and mobility

### 1. Freedom of movement

According to Article 34 PD 141/2013, beneficiaries of international protection enjoy the right to free movement under the same conditions as other legally residing third-country nationals. No difference in treatment is reported between different international protection beneficiaries.

### 2. Travel documents

Recognised **refugees**, upon request submitted to the competent authority, are entitled to a travel document (*titre de voyage*), regardless of the country in which they have been recognised as refugees

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<sup>792</sup> Pro Asyl and Refugee Support Aegean, *Rights and effective protection exist only on paper: The precarious existence of beneficiaries of international protection in Greece*, 30 June 2017, available at: <http://bit.ly/2FkN0i9>, 26-27.

<sup>793</sup> Information provided by the Asylum Service, 15 February 2018.

<sup>794</sup> Information provided by the Directorate of the Hellenic Police, 29 January 2018.

<sup>795</sup> GCR, ‘Πρώτη απόφαση διοικητικών δικαστηρίων για οικογενειακή επανένωση πρόσφυγα’, 8 February 2018, available in Greek at: <http://bit.ly/2FhY5EE>.

<sup>796</sup> Information provided by the Ministry of Foreign Affairs, 18 January 2018.

<sup>797</sup> Article 21(4) L 4375/2016.

in accordance with the model set out in Annex to the 1951 Refugee Convention.<sup>798</sup> This travel document allows beneficiaries of refugee status to travel abroad, unless compelling reasons of national security or public order exist. The abovementioned travel document is issued from the Passport Directorate of the Hellenic Police Headquarters,<sup>799</sup> subject to a fee of €85.<sup>800</sup> These travel documents are valid for 5 years for adults and can be renewed.<sup>801</sup>

The same applies to beneficiaries of **subsidiary protection**, if they are unable to obtain a national passport, unless compelling reasons of national security or public order exist.<sup>802</sup> In practice, beneficiaries of subsidiary protection must present to the Greek authorities a verification from the diplomatic authorities of their country of origin, certifying their inability to obtain a national passport. This prerequisite is extremely onerous, as beneficiaries of subsidiary protection may also fear persecution or ill-treatment from their country of origin. Furthermore, the issuance of this verification lies upon the discretion of the diplomatic authorities of their country of origin and depends on the policy of each country.

The waiting period for the issuance of travel documents can prove lengthy and may exceed 8 months in some cases. In 2017, a total of 6,358 positive decisions were issued on travel document applications.<sup>803</sup>

Persons recognised as beneficiaries of international protection under the “old procedure” under PD 114/2010 apply for travel documents before Aliens Directorate of Attica of the Hellenic Police (*Διεύθυνση Αλλοδαπών Αττικής*). The waiting period for these cases is reported to be much shorter, around 10 days,<sup>804</sup> although GCR has noted that this can be extended for a period of about a month. In 2017 there were 937 applications for travel documents and 889 travel documents were issued.<sup>805</sup>

## D. Housing

### Indicators: Housing

- |  |     |
|--|-----|
| 1. For how long are beneficiaries entitled to stay in reception centres?       | N/A |
| 2. Number of beneficiaries staying in reception centres as of 31 December 2017 | N/A |

According to Article 30 PD 141/2013, beneficiaries of international protection should enjoy the same rights as Greek citizens and receive the necessary social assistance, according to the terms applicable to Greek citizens. However, administrative and bureaucratic barriers, lack of state-organised actions in order to address their particular situation, non-effective implementation of the law, and the impact of economic crisis prevent international protection holders from the enjoyment of their rights, which in some cases may also constitute a violation of the principle of equal treatment enshrined in L 3304/2005, transposing Directives 2000/43/EU and 2000/78/EU.

Due to the enhanced capacity of the Asylum Service in Greece, 10,364 people received international protection in 2017. This means that 20% more people received international protection in 2017 than in the entire period between June 2013 and December 2016 (8,732). The increased number of beneficiaries raises a pressing need to support their transition from the assistance they received as

<sup>798</sup> Article 25(1) PD 141/2013.

<sup>799</sup> Article 25(2) PD 141/2013.

<sup>800</sup> Asylum Service, *Frequently asked questions on the rights of asylum seekers and beneficiaries of international protection*, 18 February 2015, available in Greek at: <http://bit.ly/2jGtlw0>.

<sup>801</sup> Joint Ministerial Decision 10566/2014, Gov. Gazette B/3223/02.12.2014, available at: <http://bit.ly/2ImEMwy>.

<sup>802</sup> Article 25(4) PD 141/2013.

<sup>803</sup> Information provided by the Asylum Service, 15 February 2018.

<sup>804</sup> Information provided by the Directorate of the Hellenic Police, 29 January 2018.

<sup>805</sup> *Ibid.*

asylum seekers to the national programmes they are eligible for in Greece on the same terms and conditions as Greek nationals.<sup>806</sup> Moreover, the impact of the financial crisis on the welfare system in Greece and the lack of an overall integration strategy should be also taken into consideration when assessing the ability of beneficiaries to live a dignified life in Greece. As stressed by UNHCR:

“[P]rovision of basic social rights is currently a challenge for both asylum seekers and beneficiaries of international protection in Greece. The country lacks an overall integration strategy, as well as specific measures targeting the refugee population. Moreover, refugees are not always efficiently included in national social protection measures that aim to address the needs of the homeless and unemployed Greek population.”<sup>807</sup>

Throughout 2017 the return of beneficiaries of international protection from other EU countries to Greece has been halted on the basis of inadequate living conditions.<sup>808</sup> In November 2017, in the case *O.Y.K.A. v. Denmark*, the Human Rights Committee found that the potential deportation of an unaccompanied Syrian child granted protection in Greece would be unlawful, taking into account “the conditions of reception of migrant minors in Greece” among others.<sup>809</sup>

Beneficiaries of international protection have access to accommodation under the conditions and limitations applicable to third-country nationals residing legally in the country.<sup>810</sup> In practice, however, there are generally limited accommodation places for homeless people in Greece and no shelters dedicated to recognised refugees or beneficiaries of subsidiary protection. There is also no provision for financial support for living costs.

In **Athens**, for example, there are only four shelters for homeless people, including Greek citizens and third-country nationals lawfully on the territory. At these shelters, beneficiaries of international protection can apply for accommodation, but it is extremely difficult to be admitted given that these shelters are always overcrowded and constantly receiving new applications for housing. According to GCR’s experience, those in need of shelter who lack the financial resources to rent a house remain homeless or reside in abandoned houses or overcrowded apartments, which are on many occasions sublet. A report published by Pro Asyl and Refugee Support Aegean in June 2017 documents cases of recognised beneficiaries of international protection living under deplorable conditions, including persons returned from other EU countries.<sup>811</sup>

In mid-2017, a transitional period of some months was agreed, during which beneficiaries of international protection could be accommodated under the UNHCR accommodation scheme and receive cash assistance. In January 2018, some 3,000 beneficiaries of international protection were provided accommodation in apartments through the UNHCR scheme and 6,000 received cash assistance.<sup>812</sup> As mentioned in [Reception Conditions: UNHCR Accommodation Scheme](#), the UNHCR accommodation scheme is dedicated to vulnerable applicants and thus cannot address the needs of recognised refugees who do not meet vulnerability criteria, or beneficiaries who have not already participated in the programme as applicants. Accommodation is provided for a transitional period.

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<sup>806</sup> UNHCR, *Greece Fact Sheet*, 1-31 January 2018, available at: <http://bit.ly/2oAeQzB>.

<sup>807</sup> Pro Asyl and Refugee Support Aegean, *Rights and effective protection exist only on paper: The precarious existence of beneficiaries of international protection in Greece*, 30 June 2017, available at: <http://bit.ly/2FkN0i9>, 24, citing correspondence with UNHCR on 10 February 2017.

<sup>808</sup> *Ibid*, 9, citing Administrative Court of Hannover, Decision of 19 April 2017 and German Federal Constitutional Court, Decision of 8 May 2017.

<sup>809</sup> Human Rights Committee, *O.Y.K.A. v. Denmark*, Communication No 2770/2016, 30 November 2017.

<sup>810</sup> Article 33 PD 141/2013.

<sup>811</sup> Pro Asyl and Refugee Support Aegean, *Rights and effective protection exist only on paper: The precarious existence of beneficiaries of international protection in Greece*, 30 June 2017, 14-16.

<sup>812</sup> UNHCR, *Greece Fact Sheet*, 1-31 January 2018, available at: <http://bit.ly/2oAeQzB>.



## E. Employment and education

### 1. Access to the labour market

Articles 69 and 71 L 4375/2016, provide for full and automatic access to the labour market for recognised refugees and subsidiary protection beneficiaries without any obligation to obtain a work permit.

However, as mentioned in [Reception Conditions: Access to the Labour Market](#), the current context of financial crisis, high unemployment rates and further obstacles that might be posed by competition with Greek-speaking employees, prevent the integration of beneficiaries into the labour market. Third-country nationals remain over-represented on the relevant unemployment statistical data.

Similar to asylum seekers, beneficiaries of international protection face obstacles in the issuance of Tax Registration Number (AFM), which hinder their access to the labour market and registration with the Unemployment Office of OAED.

### 2. Access to education

No free Greek language courses were provided by the State in 2017. The only programme organised by the University of Athens charges a fee for participation in Greek language courses, ranging from €500 to €670 per academic year for migrants. There are also a few NGOs, including GCR, which have programmes for free courses of Greek language to refugees and migrants.

In January 2018, the Ministry of Education together with the Ministry Migration Policy announced a pilot programme of Greek language courses funded by the Asylum, Migration and Integration Fund (AMIF), targeting asylum seekers and beneficiaries of international protection over the age of 15. A group of 2,000 persons between the age of 15 to 18 and a 3,000 persons over 18 would be able to participate in the programme in 2018, as announced.<sup>813</sup>

## F. Social welfare

The law provides access to social welfare for beneficiaries of international protection without drawing any distinction between refugees and beneficiaries of subsidiary protection. Beneficiaries of international protection should enjoy the same rights and receive the necessary social assistance according to the terms that apply to nationals.<sup>814</sup>

### 1. Types of social benefits

However, not all beneficiaries have access to social rights and welfare benefits. In practice, difficulties in access to rights stem from bureaucratic barriers, which make no provision to accommodate the inability of beneficiaries to submit certain documents such as family status documents, birth certificates or diplomas, or even the refusal of civil servants to grant them the benefits provided, contrary to the principle of equal treatment as provided by Greek and EU law.

**Family allowance:** The family allowance is provided to families that can demonstrate 10 years of permanent and uninterrupted stay in Greece. As a result, the majority of beneficiaries of international protection are excluded from this benefit.

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<sup>813</sup> Ministry of Migration Policy and Ministry of Education, 'Πρόγραμμα "Μαθήματα Γλώσσας και Πολιτισμού για Πρόσφυγες και Μετανάστες 15+", 23 January 2018, available in Greek at: <http://bit.ly/2Fid9SI>.

<sup>814</sup> Articles 29 and 30 PD 141/2013.

**Single mother allowance:** Allowance to single mothers is provided to those who can provide proof of their family situation e.g. divorce, death certificate, birth certificate. With no access to the authorities of their country, many mothers are excluded because they cannot provide the necessary documents.

**Single child allowance:** The single child support allowance has replaced the existing family allowances.<sup>815</sup>

**Student allowance:** Furthermore, beneficiaries of international protection are excluded by law from the social allowance granted to students, which amounts to €1,000 annually. According to the law, this allowance is provided only to Greek nationals and EU citizens.<sup>816</sup>

**Disability benefits:** Beneficiaries of international protection with disabilities also face great difficulties in their efforts to access welfare benefits. First they have to be examined by the Disability Accreditation Centre to assess whether their disability is at a level above 67%, in order to be eligible for the Severe Disability Allowance.<sup>817</sup> Even if this is successfully done, there are often significant delays in the procedure.

**KEA:** Since February 2017, the Social Solidarity Income (*Κοινωνικό Επίδομα Αλληλεγγύης*, KEA) is established as a new welfare programme regulated by Law 4389/2016.<sup>818</sup> This income of €200 per month for each household, plus €100 per month for each additional adult of the household and €50 per month for each additional child of the household, was intended to temporarily support people who live below the poverty line in the current humanitarian crisis, including beneficiaries of international protection.

KEA is granted based on the following criteria: family status and family members; income; and assets. It is described as a solidarity programme connected to supplementary services, such as access to social services that may provide cheaper electricity or water.

However, the preconditions are difficult to meet. In order to receive KEA:

- Each member of the household must obtain a Tax Registration Number (AFM), a Social Security Number (AMKA) and a bank account;
- Each household must legally and permanently reside in Greece;
- The following documents are required to prove their residence: (a) for residence in owner-occupied property, a contract certifying ownership and utility bills for state-owned enterprises; (b) for residence in rented property, a copy of the electronic lease agreement, plus utility bills; (c) for residence in a property based on free concession, the concession agreement and bills for state-owned enterprises. In case of homelessness, homeless applicants are required to submit a homelessness certificate issued by the municipality or by shelter or a day-centre. It is obviously almost impossible for homeless beneficiaries to provide all of these documents, meaning that they cannot apply for the allowance.

Unfortunately, except for KEA, there are no other effective allowances in practice. There is no provision of state social support for vulnerable cases of beneficiaries such as victims of torture. The only psychosocial and legal support addressed to the identification and rehabilitation of torture victims in Greece is offered by three NGOs, GCR, Day Centre Babel and MSF, which means that the continuity of the programme depends on funding.

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<sup>815</sup> Article 1(IA)(2) L 4093/2012, as amended by Article 6 L 4472/2017.

<sup>816</sup> Article 10 L 3220/2004.

<sup>817</sup> JMD Γ4α/Φ. 225/161, Official Gazette 108/B/15.2.1989.

<sup>818</sup> Article 235 L 4389/2016. See KEA, 'Πληροφορίες για το KEA', available in Greek at: <http://bit.ly/2HcB6XT>.

**Uninsured retiree benefit:** Finally, retired beneficiaries of international protection, in principle have the right to the Social Solidarity Benefit of Uninsured Retirees.<sup>819</sup> However, the requirement of 15 years of permanent residence in Greece in practice excludes from this benefit seniors who are newly recognised beneficiaries. The period spent in Greece as an asylum seeker is not calculated towards the 15-year period, since legally the application for international protection is not considered as a residence permit.

The granting of social assistance is not conditioned on residence in a specific place.

## G. Health care

Free access to health care for beneficiaries of international protection is provided under L 4368/2016. However, the impact of the financial crisis on the health system and structural deficiencies such as the lack of adequate cultural mediators aggravate access to health care, including access to health care for people belonging to vulnerable groups (see [Reception Conditions: Health Care](#)). Moreover, access to health is also impeded by obstacles with regard to the issuance of a Social Security Number (AMKA).

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<sup>819</sup> Article 93 L 4387/2016.

## ANNEX I – Transposition of the CEAS in national legislation

### Directives and other measures transposed into national legislation

Directive / Regulation	Deadline for transposition	Date of transposition	Official title of corresponding act (GR)	Web Link
<b>Directive 2011/95/EU</b> Recast Qualification Directive	21 December 2013	21 October 2013	Presidential Decree 141/2013 “on the transposition of Directive 2011/95/EU into Greek legislation”	<a href="http://bit.ly/1FWWVGX">http://bit.ly/1FWWVGX</a> (GR)
<b>Directive 2013/32/EU</b> Recast Asylum Procedures Directive	20 July 2015 Article 31(3)-(5) to be transposed by 20 July 2018	3 April 2016	Law 4375/2016 “Organisation and functioning of the Asylum Service, Appeals Authority, Reception and Identification Service, establishment of General Secretariat for Reception, transposition of Directive 2013/32/EU of the European Parliament and of the Council ‘on common procedures for granting and withdrawing international protection (recast)’ (L 180/29.6.2013), provisions on employment of beneficiaries of international protection” and other provisions.	<a href="http://bit.ly/2kKm2cu">http://bit.ly/2kKm2cu</a> (EN) <a href="http://bit.ly/234vUhP">http://bit.ly/234vUhP</a> (GR)
<b>Directive 2013/33/EU</b> Recast Reception Conditions Directive	20 July 2015	3 April 2016	Partial transposition of Articles 8-11 Law 4375/2016 (Article 46)	<a href="http://bit.ly/2kKm2cu">http://bit.ly/2kKm2cu</a> (EN) <a href="http://bit.ly/234vUhP">http://bit.ly/234vUhP</a> (GR)
<b>Regulation (EU) No 604/2013</b> Dublin III Regulation	Directly applicable 20 July 2013	3 April 2016	Law 4375/2016 (Article 46)	<a href="http://bit.ly/2kKm2cu">http://bit.ly/2kKm2cu</a> (EN) <a href="http://bit.ly/234vUhP">http://bit.ly/234vUhP</a> (GR)

### Pending transposition measures

Directive	Deadline for transposition	Stage of transposition	Participation of NGOs
<b>Directive 2013/33/EU</b> Recast Reception Conditions Directive	20 July 2015	Draft law submitted for consultation in October 2016 Comments by <a href="#">GCR</a> , <a href="#">PRAKSIS</a> and <a href="#">Doctors of the World</a>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

## ANNEX II – Template “safe third country” decision

Regional Asylum Office Samos, Decision of 9 November 2017 (Unofficial translation)

### Subject: Decision on application for international protection

Regarding the application submitted for international protection of, according his statement, (name) ..... (surname) ..... (fathers' name) .....(mother's name) ..... dob. .... submitted on .... /8/2017.

#### In view of

- a) The provisions of L. D. 3989/1959 (Gov. Gazette 201 A'), as supplemented by I.L. 389/1967 (Gov. Gazette 125 A'),
  - b) the provisions of L. 4375/2016 (Gov. Gazette 51 A'),
  - c) the provisions of P.D. 141/2013 (Gov. Gazette 226152 A')
  - d) the provision of Ministerial Decision 6416/2014 «Rules of Procedure of the Asylum Service » (Gov. Gazette 2034/25.07.2014 B')
  - e) the EU-Turkey Statement as of 18.03.2016,
  - f) his application as of 16/06/2017,
  - g) the transcript of his interview,
  - h) relevant documents provided by the applicant,
- all the information contained in the dossier of the applicant.

### CONSIDER THE APPLICATION IN ACCORDANCE WITH THE LAW

#### I. Procedure

1. The applicant filed an application for international protection on 16/06/2017 at the RAO of Samos. His application will be examined in accordance with the procedure set out in Article 60 (4) of Law 4375/2016, as the applicant does not fall within any of the exceptions regarding the application [of said provision] provided in paragraph 4 (f) of said Article.
2. The applicant who was a detainee, appeared personally in the interview, on ..../9/2017 [....].
3. At the start of the interview, as it comes from the transcript of the interview, the applicant was informed that, by taking into consideration the information of his administrative file, the [Asylum] Service intends to examine in his case the application of the 'first country of asylum' concept and the 'safe third country' concept, in accordance with Articles 55 and 56 of L. 4375/2016. In particular, the applicant was informed that as he had entered Greece from Turkey after the 20th March 2016, that country may be considered as a "first country of asylum" or a "safe third country" within the meaning of the above provisions.
4. While the interview, the applicant was given the opportunity to challenge the fact that Turkey is a safe country for himself, the fact that there is a sufficient connection with this country and to raise any other objection.

#### II. The applicant's claims during the interview

[....]

#### III. Assessment of the claims:

All the applicant's claims as stated during the interview and assessed with its conclusion are accepted [....].

#### IV. Legal basis

**In accordance with Art. 54 L. 4375/2016, the Responding Authority rejects as inadmissible an application for international protection, inter alia, in case that the applicant enjoys sufficient protection in a country which is not an EU Member State and it is considered as a first country of asylum for himself, in accordance with Art. 55 L.4375/2016 or when the competence authorities consider that a country is a safe third country for the applicant, in accordance with Art. 56 of said law.**

By taking into consideration the applicant's claims as expressed and assessed and the evidences which are currently known to the Asylum Service (legislation of Turkey regarding international protection<sup>1</sup>, report of the INGO ECRE<sup>2</sup>, report of the UNHCR Regional Refugee and Migrant Response Plan for Europe; Eastern Mediterranean and Western Balkans Route; January - December 2016, January 2016<sup>3</sup> and the exchange of correspondence between the Turkish and the Greek authorities as well as the European officials and [the office of] the United Nations High Commissioner for Refugees) and namely:

- a) Letter of 12 April 2016 by Selim Yenel (Ambassador – Permanent Representation of Turkey at the EU) to Matthias Ruete (European Commission), where clarifications are provided for the implementation of the Turkish legislation "REGULATION AMENDING THE TEMPORARY PROTECTION REGULATION No 2016/8722", regarding the Syrians who are returned from Greece to Turkey within the frame of the EU-Turkey Statement of the 18th of March 2016.
- b) Letter of 24 April 2016 by Selim Yenel (Ambassador – Permanent Representation of Turkey at the EU).
- c) Letter of 5 May 2016 by Matthias Ruete (European Commission) to Vasilis Papadopoulos (Secretary General for Migration) as of the implementation of the Turkish legislation "REGULATION AMENDING THE TEMPORARY PROTECTION REGULATION" regarding the Syrians returned from Greece to Turkey within the frame of the EU-Turkey Statement of the 18th of March 2016.
- d) Letter of 29 July 2016 by D. Avramopoulos (European Commission) regarding the implementation of the EU-Turkey Statement.<sup>4</sup>

Letters of the UNHCR to the Greek Asylum Service as of the implementation of the implementation of the Turkish legislation "REGULATION AMENDING THE TEMPORARY PROTECTION REGULATION" regarding the Syrians returned from Greece to Turkey within the frame of the EU-Turkey Statement of the 18th of March 2016, following the recent developments in Turkey.

It follows that:

- a. His life and liberty are not threatened in Turkey on account of race, religion, nationality, membership of a particular social group or political opinion.

- b. In Turkey, respect of the *non-refoulement* principle is provided by law in accordance with the Geneva Convention, while available information to the Asylum Service suggests that it is complied with in practice. Besides, the Turkish authorities confirm the respect of the *non-refoulement* principle for those returned in the context of the EU-Turkey statement.
- c. There is no risk of serious harm for the applicant pursuant to Article 15 PD 141/2013.
- d. Turkish legislation forbids the removal of an applicant to a country where he or she runs the risk of suffering torture or cruel, inhuman or degrading treatment or punishment, as defined in international law.
- e. In Turkey there is a possibility to request refugee status and, in the case of Syrian nationals a temporary protection status is granted, which ensures their protection in accordance with the Geneva Convention. More specifically, in Turkey there is a possibility for the applicant to request the aforementioned protection and, in case such protection is granted, to benefit from rights equivalent to those foreseen in the Geneva Convention (namely relating to the right to employment, access to education, health care and social security),
- f. Furthermore, it is deduced from the fact that the applicant has the possibility to request international protection status that the applicant has a connection with said third country, on the basis of which it would be reasonable for him to relocate there.

Moreover, in the present case, due to the mere fact that the applicant holds Syrian nationality, it follows that he enjoys temporary effective protection in Turkey, benefitting *inter alia* from the principle of *non-refoulement*.

Besides, as can be deduced from the EU-Turkey statement of 18.03.2016, the applicant will be admitted again to that country.

Accordingly, the application shall be rejected as inadmissible as Turkey may be considered a "safe third country" for the applicant pursuant to Article 56 of Law 4375/2016.

**For these reasons:**

**The application for granting international protection of (surname) ..... (name) ..... is rejected as inadmissible in accordance with art. 54 L. 4375/2016.**

Against this decision an appeal before the Appeal's Commission can be lodged within 5 days from the day of the notification (art. 61 par. 1(d) L. 4375/2016). In case that the decision is not appealed within the above time limit, the decision will become final and the applicant will be removed from the country.

In case that the applicant, for any reason, will not be admitted to Turkey, his application for granting international protection will be examined by the Greek Authorities.

**References:**

- 1) Republic of Turkey, Ministry of Interior, Directorate General of Migration Management Publications, Law on Foreigners and International Protection, May 2014, [http://www.goc.gov.tr/files/files/YUKK\\_1%CC%87NGI%CC%87LI%CC%87ZCE\\_BASKI%281%29%281%29.pdf](http://www.goc.gov.tr/files/files/YUKK_1%CC%87NGI%CC%87LI%CC%87ZCE_BASKI%281%29%281%29.pdf)
- 2) Refugee Rights Turkey; ECRE - European Council on Refugees and Exiles: Country Report: Turkey, December 2015, [http://www.ecoi.net/file\\_upload/1226\\_1452169995\\_aida-tr-update-i.pdf](http://www.ecoi.net/file_upload/1226_1452169995_aida-tr-update-i.pdf)
- 3) UNHCR - UN High Commissioner for Refugees: Regional Refugee and Migrant Response Plan for Europe; Eastern Mediterranean and Western Balkans Route; January - December 2016, January 2016 (available at ecoi.net) [http://www.ecoi.net/file\\_upload/1930\\_1452759956\\_mrpforeurope2016.pdf](http://www.ecoi.net/file_upload/1930_1452759956_mrpforeurope2016.pdf)
- 4) Letters among the Turkish authorities, the Greek Authorities and European officials, available at: <http://asylo.gov.gr/wp-content/uploads/2016/10/scan-file-mme.pdf>
- 5) Republic of Turkey, Ministry of Interior, Directorate General of Migration Management Publications, Law on Foreigners and International Protection, PART ONE Purpose, Scope, Definitions and Non-Refoulement, SECTION TWO Non-refoulement, Non-refoulement ARTICLE 4, May 2014, [http://www.goc.gov.tr/files/files/YUKK\\_1%CC%87NGI%CC%87LI%CC%87ZCE\\_BASKI%281%29%281%29.pdf](http://www.goc.gov.tr/files/files/YUKK_1%CC%87NGI%CC%87LI%CC%87ZCE_BASKI%281%29%281%29.pdf)
- 6) Republic of Turkey, Ministry of Interior, Directorate General of Migration Management, Temporary Protection Regulation, undated, PART TWO General Principles, Non-refoulement ARTICLE 6 [http://www.goc.gov.tr/files/\\_dokuman28.pdf](http://www.goc.gov.tr/files/_dokuman28.pdf)
- 7) Despite the reported isolated incidents regarding the return of Syrians against their will from Turkey to Syria, which have been contradicted by the Turkish authorities, there is no indication that the applicants who are returned from Greece to Turkey, will be returned to Syria against their will - (see: Al Jazeera, Turkey official denies Syrian refugee expulsions, 01 Apr 2016, <http://www.aljazeera.com/news/2016/04/turkey-official-denies-syrian-refugee-expulsions-160401105949927.html>, St. Louis Post-Dispatch, The Latest: UN: 13 deported migrants wanted to seek asylum, April 6, 2016, [http://www.stltoday.com/news/world/the-latest-turkish-pm-denies-sending-syrians-back/article\\_72a39598-7c7d-5a89-bdb5-457785d7976b.html](http://www.stltoday.com/news/world/the-latest-turkish-pm-denies-sending-syrians-back/article_72a39598-7c7d-5a89-bdb5-457785d7976b.html), The New Arab, Turkey denies accusations it is deporting back Syrian refugees, April 03, 2016, <https://www.alaraby.co.uk/english/news/2016/4/3/turkey-denies-accusations-it-is-deporting-back-syrian-refugees>, BBC News, Turkey 'illegally returning Syrian refugees' - Amnesty, 1 April 2016, <http://www.bbc.com/news/world-europe-35941947>, Reuters Canada, Amnesty says Turkey illegally sending Syrians back to war zone, Fri Apr 1, 2016, <http://ca.reuters.com/article/topNews/idCAKCN0WY33A>, SkyNews, 1 April 2016, Turkey illegally returns Syrians back, <http://www.skynews.com.au/news/world/europe/2016/04/01/turkey-illegally-returns-syrians-back.html>)
- 8) as above
- 9) Republic of Turkey, Ministry of Interior, Directorate General of Migration Management Publications, Law on Foreigners and International Protection, PART TWO Foreigners, SECTION FOUR Removal, Exemption from removal decision ARTICLE 55, May 2014, [http://www.goc.gov.tr/files/files/YUKK\\_1%CC%87NGI%CC%87LI%CC%87ZCE\\_BASKI%281%29%281%29.pdf](http://www.goc.gov.tr/files/files/YUKK_1%CC%87NGI%CC%87LI%CC%87ZCE_BASKI%281%29%281%29.pdf).
- 10) Turkey hosts more than 2,8 millions Syrian Refugees on its territory and more than 200.000 non Syrians (see for example European Commission: Turkey 2016 Report [SWD(2016) 366 final], 9 November 2016 (available at ecoi.net) [http://www.ecoi.net/file\\_upload/1226\\_1480931038\\_20161109-report-turkey.pdf](http://www.ecoi.net/file_upload/1226_1480931038_20161109-report-turkey.pdf) and European Commission, Humanitarian aid and Civil Protection, ECHO Factsheet Turkey: Refugee Crisis, January 2017, [http://ec.europa.eu/echo/files/aid/countries/factsheets/turkey\\_syrian\\_crisis\\_en.pdf](http://ec.europa.eu/echo/files/aid/countries/factsheets/turkey_syrian_crisis_en.pdf),
- 11) Republic of Turkey, Ministry of Interior, Directorate General of Migration Management Publications, Law on Foreigners and International Protection, PART THREE International Protection, SECTION ONE Types of International Protection, Refugees ARTICLE 61, Conditional refugees ARTICLE 62, May 2014, [http://www.goc.gov.tr/files/files/YUKK\\_1%CC%87NGI%CC%87LI%CC%87ZCE\\_BASKI%281%29%281%29.pdf](http://www.goc.gov.tr/files/files/YUKK_1%CC%87NGI%CC%87LI%CC%87ZCE_BASKI%281%29%281%29.pdf).



12) Republic of Turkey, Ministry of Interior, Directorate General of Migration Management Publications, Law on Foreigners and International Protection, April 2014, PART THREE, [http://www.goc.gov.tr/files/files/eng\\_minikanun\\_5\\_son.pdf](http://www.goc.gov.tr/files/files/eng_minikanun_5_son.pdf).

13) DCR - Dutch Council for Refugees; ECRE - European Council for Refugees and Exiles: The DCR/ECRE desk research on application of a safe third country and a first country of asylum concepts to Turkey, May 2016 (published by ECRE) [http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aidfiles/turkeynote\\_final\\_edited\\_DCR\\_ECRE.pdf](http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aidfiles/turkeynote_final_edited_DCR_ECRE.pdf).

14) Arjomand, Noah: Afghan Exodus: Smuggling networks, migration and settlement patterns in Turkey, 10 September 2016 (published by AAN, available at ecoi.net) [http://www.ecoi.net/local\\_link/330272/457941\\_en.html](http://www.ecoi.net/local_link/330272/457941_en.html).

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ΑΠΟΦΑΣΗ ΑΠΑΡΑΔΕΚΤΟΥ (ασφαλής τρίτη χώρα) / Αρ. Υπόθεσης / Αρ. Ατομικού  
Φακέλου



ΕΛΛΗΝΙΚΗ ΔΗΜΟΚΡΑΤΙΑ  
HELLENIC REPUBLIC

Υπηρεσία Ασύλου  
Asylum Service /

Σάμος, /11/2017  
Αρ. Πρωτ.:

**Περιφερειακό Γραφείο Ασύλου Σάμου**

Δ/νση: ΚΥΤ Σάμου, 83100 Σάμος  
Τηλ.: 2273081450  
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**Θέμα: Απόφαση επί αίτησης διεθνούς προστασίας**

Επί της από /08/2017 αίτησης για χορήγηση διεθνούς προστασίας του κατά δήλωσή του πολίτη ΣΥΡΙΑΣ, (επ) (ον) του και της , με ημ. γεν

**Λαμβάνοντας υπόψη**

α') τις διατάξεις του Ν.Δ. 3989/1959 (ΦΕΚ 201, τ. Α'), όπως συμπληρώθηκε με τον Α.Ν. 389/1967 (ΦΕΚ 125, τ. Α'),

β') τις διατάξεις του Νόμου 4375/2016 (ΦΕΚ 51, τ. Α'),

γ') τις διατάξεις του Π.Δ. 141/2013 (ΦΕΚ 226152, τ. Α'),

δ') τις διατάξεις της Υπουργικής Απόφασης οικ. 6416/2014 «Κανονισμός λειτουργίας Υπηρεσίας Ασύλου» (ΦΕΚ 2034/25.07.2014 τ. Β'),

ε') την από 18.03.2016 Κοινή Δήλωση Ευρωπαϊκής Ένωσης-Τουρκίας,

στ') την από 24/08/2017 αίτηση του ανωτέρω,

ζ') το πρακτικό της συνέντευξης του ανωτέρω,

η') τα σχετικά έγγραφα που προσκόμισε ο αιτών,

θ') όλα τα στοιχεία του διοικητικού φακέλου του.

**ΣΚΕΦΘΗΚΕ ΣΥΜΦΩΝΑ ΜΕ ΤΟ ΝΟΜΟ**

**I. Διαδικασία**

1. Ο αιτών κατέθεσε αίτηση διεθνούς προστασίας στις /08/2017 στο ΠΓΑ Σάμου. Η αίτησή του θα εξεταστεί σύμφωνα με τη διαδικασία του άρθρου 60 παρ.4 του Ν.4375/2016, καθότι ο αιτών δεν εμπίπτει σε κάποια από τις εξαιρέσεις εφαρμογής που προβλέπονται στην παρ. 4(στ) του ίδιου άρθρου.

2. Ο αιτών παρέστη αυτοπροσώπως, σύμφωνα με το νόμο, στις /09/2017 για τη διεξαγωγή της συνέντευξης στα αραβικά όπως προκύπτει από το σχετικό πρακτικό συνέντευξης.

3. Κατά την έναρξη της συνέντευξης, όπως προκύπτει από το πρακτικό συνέντευξης ο αιτών ενημερώθηκε ότι, με βάση τα στοιχεία του διοικητικού του φακέλου, η Υπηρεσία προτίθεται να εξετάσει στην περίπτωση του την εφαρμογή της έννοιας της «Πρώτης Χώρας Ασύλου» και της έννοιας της «Ασφαλούς Τρίτης Χώρας», σύμφωνα με τα άρθρα 55 και 56 του νόμου 4375/2016. Ειδικότερα, ο αιτών ενημερώθηκε ότι εφόσον εισήλθε στην Ελλάδα από την Τουρκία μετά τις 20 Μαρτίου 2016, η χώρα αυτή ενδεχομένως να μπορεί να χαρακτηριστεί στην περίπτωση του «Πρώτη Χώρα Ασύλου» ή «Ασφαλής Τρίτη Χώρα» κατά την έννοια των ανωτέρω διατάξεων.

4. Στον αιτούντα, κατά τη συνέντευξη, δόθηκε η δυνατότητα να αμφισβητήσει ότι η Τουρκία είναι ασφαλής για τον ίδιο, καθώς και το γεγονός ότι υπάρχει επαρκής σύνδεσμός του με τη χώρα αυτή και να προβάλει οποιαδήποτε άλλη τυχόν αντίρρηση.

**II. Ισχυρισμοί του αιτούντος κατά τη συνέντευξη**

**III. Αξιολόγηση ισχυρισμών:**

Γίνεται δεκτό το σύνολο των ισχυρισμών του αιτούντος όπως αυτοί εκτέθηκαν κατά τη συνέντευξη και αξιολογήθηκαν στο συμπέρασμα αυτής. .

**IV. Νομική Βάση**

Σύμφωνα με το άρθρο 54 του νόμου 4375/2016, η Αποφαινόμενη Αρχή απορρίπτει ως απαράδεκτη αίτηση διεθνούς προστασίας, μεταξύ άλλων, όταν ο αιτών απολαμβάνει επαρκούς προστασίας από χώρα που δεν είναι κράτος μέλος της Ε.Ε. και θεωρείται ως πρώτη χώρα ασύλου για αυτόν, σύμφωνα με το άρθρο 55 του ως άνω νόμου, καθώς και όταν οι αρμόδιες Αρχές κρίνουν ότι μία χώρα συνιστά ασφαλή τρίτη χώρα για τον

αιτούντα σύμφωνα με το άρθρο 56 του ίδιου ως άνω νόμου.

Από τους ισχυρισμούς του ανωτέρω όπως αυτοί εκτέθηκαν και αξιολογήθηκαν, καθώς και από τα στοιχεία που είναι γνωστά σήμερα στην Υπηρεσία Ασύλου/νομοθεσία της Τουρκίας σχετικά με τη Διεθνή Προστασία<sup>1</sup>, Έκθεση της διεθνούς μη Κυβερνητικής οργάνωσης ECRE<sup>2</sup>, την Έκθεση της Υπατης Αρμοστείας του Ο.Η.Ε για τους Πρόσφυγες, Regional Refugee and Migrant Response Plan for Europe; Eastern Mediterranean and Western Balkans Route; January - December 2016, January 2016<sup>3</sup> και την ανταλλαγή επιστολών μεταξύ των τουρκικών και ελληνικών Αρχών, καθώς και των ευρωπαϊκών αξιωματούχων και της Υπατης Αρμοστείας Ο.Η.Ε για τους Πρόσφυγες και συγκεκριμένα:

α. την από 12 Απριλίου 2016 Επιστολή του SelimYenel (Πρέσβευτής – Μόνιμη Αντιπροσωπεία της Τουρκίας στην Ευρωπαϊκή Ένωση) στον Matthias Ruete (Ευρωπαϊκή Επιτροπή) όπου δίνονται διευκρινίσεις για την εφαρμογή της τουρκικής νομοθεσίας "REGULATION AMENDING THE TEMPORARY PROTECTION REGULATION No 2016/8722", για τους Σύρους που επιστρέφουν από την Ελλάδα στην Τουρκία στο πλαίσιο της Κοινής Δήλωσης ΕΕ-Τουρκίας της 18 Μαρτίου 2016,

β. την από 24 Απριλίου 2016 Επιστολή του Selim Yenel (Πρέσβυς – Μόνιμη Αντιπροσωπεία της Τουρκίας στην Ευρωπαϊκή Ένωση),

γ. την από 5 Μαΐου 2016 Επιστολή του MatthiasRuete (Ευρωπαϊκή Επιτροπή) προς τον Βασίλειο Παπαδόπουλο (Γενικός Γραμματέας Μεταναστευτικής Πολιτικής) σχετικά με την εφαρμογή της τουρκικής νομοθεσίας "REGULATION AMENDING THE TEMPORARY PROTECTION REGULATION" για τους Σύρους που επιστρέφουν από την Ελλάδα στην Τουρκία στο πλαίσιο της Κοινής Δήλωσης ΕΕ-Τουρκίας της 18 Μαρτίου 2016

δ. την από 29 Ιουλίου 2016 Επιστολή του Αβραμόπουλου Δ. (Ευρωπαϊκή Επιτροπή) σχετικά με την υλοποίηση της Κοινής Δήλωσης ΕΕ – Τουρκίας<sup>4</sup>

ε. τις επιστολές της Υπατης Αρμοστείας του ΟΗΕ για τους Πρόσφυγες προς την Ελληνική Υπηρεσία Ασύλου σχετικά με την εφαρμογή της τουρκικής νομοθεσίας "REGULATION AMENDING THE TEMPORARY PROTECTION REGULATION" για τους Σύρους που επιστρέφουν από την Ελλάδα στην Τουρκία στο πλαίσιο της Κοινής Δήλωσης ΕΕ-Τουρκίας κατόπιν των πρόσφατων εξελίξεων στην Τουρκία.

προκύπτει ότι:

α. στην Τουρκία δεν απειλούνται η ζωή και η ελευθερία του λόγω φυλής, θρησκείας, εθνικότητας, συμμετοχής σε ιδιαίτερη κοινωνική ομάδα ή πολιτικών πεποιθήσεων

β. Στην Τουρκία προβλέπεται με νόμο ο σεβασμός της αρχής της μη επαναπροώθησης, σύμφωνα με τη Σύμβαση της Γενεύης<sup>5,6</sup>, ενώ από τις διαθέσιμες στην Υπηρεσία πληροφορίες<sup>7</sup>, προκύπτει ότι η αρχή της μη επαναπροώθησης τηρείται γενικά και στην πράξη. Εξ' άλλου, οι Τουρκικές Αρχές επιβεβαιώνουν την τήρηση της αρχής της μη επαναπροώθησης για όσους επιστρέφουν στο πλαίσιο της Κοινής Δήλωσης Ε.Ε-Τουρκίας<sup>8</sup>.

γ. δεν υπάρχει κίνδυνος σοβαρής βλάβης για τον αιτούντα κατά το άρθρο 15 του π.δ. 141/2013 ,

δ. η τουρκική νομοθεσία απαγορεύει την απομάκρυνση ενός αιτούντα σε χώρα όπου αυτός κινδυνεύει να υποστεί βασανιστήρια και σκληρή, απάνθρωπη ή ταπεινωτική μεταχείριση ή τιμωρία, όπως ορίζεται στο διεθνές δίκαιο<sup>9,10</sup>,

ε. στην Τουρκία υπάρχει η δυνατότητα να ζητηθεί το καθεστώς του πρόσφυγα και, στην περίπτωση αυτή στους Σύρους υπηκόους χορηγείται καθεστώς προσωρινής προστασίας το οποίο εξασφαλίζει την προστασία τους σύμφωνα με τη σύμβαση της Γενεύης. Ειδικότερα, στην Τουρκία υπάρχει η δυνατότητα ο αιτών να ζητήσει τη χορήγηση της ανωτέρω προστασίας, και στην περίπτωση που αυτή του χορηγηθεί, να του αναγνωριστούν δικαιώματα ανάλογα με αυτά που προβλέπονται στη Σύμβαση της Γενεύης (ιδίως αναφορικά με το δικαίωμα στην εργασία την πρόσβαση στην εκπαίδευση, την ιατροφαρμακευτική περίθαλψη και την κοινωνική ασφάλιση<sup>12,13,15</sup>),

στ. Περαιτέρω, από το γεγονός ότι ο αιτών έχει τη δυνατότητα να ζητήσει καθεστώς διεθνούς προστασίας<sup>12</sup>, συμπεραίνεται ότι ο αιτών έχει σύνδεσμο με την εν λόγω τρίτη χώρα, βάσει του οποίου θα ήταν εύλογο για αυτόν να μεταβεί σε αυτή.

Επιπλέον, στη συγκεκριμένη περίπτωση από μόνο το γεγονός ότι ο αιτών έχει τη Συριακή υπηκοότητα, προκύπτει ότι στην Τουρκία απολαμβάνει προσωρινής αποτελεσματικής προστασίας<sup>12,4</sup>, επωφελομένως μεταξύ άλλων από την αρχή της μη επαναπροώθησης<sup>5,6</sup>.

Εξ'άλλου, όπως μπορεί να εκτιμηθεί από την από 18.03.2016 Κοινή Δήλωση Ευρωπαϊκής Ένωσης-Τουρκίας (παραπομπή 4 και διοικητικός φάκελος), ο αιτών θα γίνει εκ νέου δεκτός στη χώρα αυτή.

Κατά συνέπεια, η αίτηση θα πρέπει να απορριφθεί ως απαράδεκτη καθώς η Τουρκία μπορεί να χαρακτηριστεί «ασφαλής τρίτη χώρα» για τον αιτούντα σύμφωνα με το άρθρο 56 του νόμου 4375/2016.

Για τους λόγους αυτούς:

**-Απορρίπτουμε την αίτηση χορήγησης διεθνούς προστασίας του (Επ.) (Ον.) του και της ως απαράδεκτη, σύμφωνα με το αρ.54 του ν.4375/2016.**

Κατά της απόφασης αυτής μπορεί να ασκηθεί προσφυγή ενώπιον Επιτροπής Προσφυγών εντός πέντε (5) ημερών από την επίδοσή της (αρθ. 61 παρ. 1(δ) του ν.4375/2016). Σε περίπτωση παράδου άπρακτης της προσθεσίας αυτής η παρούσα απόφαση θα καταστεί τελεσίδικη με συνέπεια, ο ανωτέρω να απομακρυνθεί από τη χώρα.

**Σε περίπτωση που ο αιτών για οποιοδήποτε λόγο δεν γίνει δεκτός στην Τουρκία, η αίτησή του για χορήγηση διεθνούς προστασίας θα εξεταστεί από τις ελληνικές αρχές.**

Σάμος, /11/2017

Η χειρίστρια,

Your application for international protection is rejected, as inadmissible.  
You have the right to appeal this decision within 5 days from its notification.

In case the decision is not appealed within the above deadline, you will be removed from

the country.

Παραπομπές:

- 1) Republic of Turkey, Ministry of Interior, Directorate General of Migration Management Publications, Law on Foreigners and International Protection, May 2014, [http://www.goc.gov.tr/files/files/YUKK\\_%CC%87NGI%CC%87LI%CC%87ZCE\\_BASKI%281%29%281%29.pdf](http://www.goc.gov.tr/files/files/YUKK_%CC%87NGI%CC%87LI%CC%87ZCE_BASKI%281%29%281%29.pdf)
- 2) Refugee Rights Turkey; ECRE - European Council on Refugees and Exiles: Country Report: Turkey, December 2015, [http://www.ecoi.net/file\\_upload/1226\\_1452169995\\_aida-tr-update-i.pdf](http://www.ecoi.net/file_upload/1226_1452169995_aida-tr-update-i.pdf)
- 3) UNHCR - UN High Commissioner for Refugees: Regional Refugee and Migrant Response Plan for Europe; Eastern Mediterranean and Western Balkans Route; January - December 2016, January 2016 (available at ecoinet) [http://www.ecoi.net/file\\_upload/1930\\_1452759956\\_rmrpforeurope2016.pdf](http://www.ecoi.net/file_upload/1930_1452759956_rmrpforeurope2016.pdf)
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Rejection due to Inadmissibility