

Legal Analysis

Migrants in Greece are denied the rights to international protection and family unity. The visit to the camps in Idomeni and government-run camps, and a legal analysis of the situation we observed.

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Index

1. The Idomeni camp

1.1 Interviews with Syrian migrants

1.2 Interview with UNHCR in Idomeni about arrivals and photo-identification, the suspended deportation document and legal information

1.3 Medical assistance in the Idomeni camp and interview with the MSF field coordinator

1.4 Unaccompanied foreign minors

2. Other self-managed camps around Idomeni, particularly Polikastro Eko Station

3. Militarised government-run camps – the Neokavala camp

3.1 The Katerini camp – Nireas Camping

3.2 The government-run Diavata military camp

4. The legal framework

4.1 On the information provided and the possibility of submitting an application for international protection. Violation of art. 33 of the Geneva Convention, of the Procedures Directive and of art. 3 of the ECHR

4.2 On the risk of suffering inhuman and degrading treatment. Violation of art. 3 of the ECHR

4.3 On family reunification. Violation of the Dublin Regulation, art. 8 of the ECHR and art. 7 of the EU Charter of Fundamental Rights

4.4 On access to the relocation programme

4.5 New scenarios arising after the EU-Turkey agreement

Introduction

A delegation of eight participants in the course of the “*Advanced training school for legal operators specialised in international protection*” organised by ASGI in Rome alongside legal operators from the *ADL Zavidovici* association, the *K-Pax* cooperative, the *Idea Prisma 82* cooperative and the *Alternata* cooperative travelled to Greece within the framework of the *#overthefortress* caravan organised by *Melting Pot* and the *Ambasciata dei Diritti delle Marche* to observe the **legal conditions of migrants in the camp in**

Idomeni and the government-run camps in the vicinity. The monitoring was also carried out with the help of mediators from the caravan.¹

On 26 and 27 March, we visited the Idomeni camp and interviewed the foreign citizens who were there, as well as some international organisations.

1. The Idomeni camp

The Idomeni camp, adjacent to the border with Macedonia, spreads out from the small town of Idomeni which it completely absorbs, across several kilometres in the surrounding area. When we arrived there were over 10,000 people in the camp, over 40% of them children and more than 600 pregnant women. The migrants, who were mainly Syrians, Afghans, Iraqis and Kurds, live in tents which are more or less large in size, distributed on the basis of the ethnic groups to which they belong within the camp. There is not any electric lighting or an Internet connection and, just after the twilight, the only available heat source to warm up and cook is the fire which is lighted and kept burning using wood, plastic or worn-out clothes. There are very many independent volunteer associations which organise the daily distribution of food, distribution of clothing, the provision of legal information from a self-managed “info point” and recreational activities for the children. The Idomeni camp, originally a transit camp, has gradually turned into a camp in which people “wait” for the reopening of the borders with Macedonia and for the entire Balkan route to become accessible again.

1.1 Interviews with Syrian migrants

Thanks to the assistance of Arabic language mediators we were able to interview around ten Syrian migrants, none of whom received any legal information about the right to asylum and none of whom were able to submit applications for international protection. What emerges from the interviews we conducted, is that the situation is rather confused as regards the photo-identification which foreign citizens are meant to be subjected to at the time when they enter Greece. In fact, it is unclear whether all the migrants are photo-identified, or whether photo-identification is only reserved for certain nationalities. Nonetheless, the interviewed foreign citizens possess a document issued by the Greek police when they entered Greece which records their personal details and those of their families (often written incorrectly). The interviewees who had the document had been photo-identified, which makes it likely that the document is issued following photo-identification upon arrival in Greece. The document also features a stamp which reads “final destination Germany”. Just the stamp is in English, while the rest of the document is only written in Greek. Although all the Syrian citizens deem that it is a *laissez-passer* to reach other European states, the document we were shown contains a suspended deportation order lasting six months for Syrian nationals. The document explains the reasons for this suspension, referring to the serious humanitarian situation in Syria, and it orders the Syrian citizens to remain accessible by the Greek law enforcement agencies and to inform them of any changes of residence. In the document, the Greek authorities assure that reception will be provided in authorised hotel and hospitality facilities, which had not happened up to that point. Moreover, some migrants told us that they paid for reception in hotels themselves (a photograph of the document is among the attachments in Doc. 1).

¹ The account of observations carried out from 25 to 29 March 2016

1.2 Interview with UNHCR in Idomeni about arrivals and photo-identification, the suspended deportation document and legal information

In the Idomeni camp, there is a small container with the UNHCR office inside it. UNHCR's presence in the Idomeni camp is visibly confirmed, mainly by some large tents under which some migrants sleep.

The female UNHCR worker who we interviewed reported that the suspended deportation document lasts for six months for Syrian citizens, whereas it only lasts for 30 days for the others. After the semester expires, the position of Syrian citizens should be reassessed on the basis of the persistence of the situation of widespread internal conflict.

The worker confirmed that nobody in Idomeni can apply for international protection, **because access is materially impeded**. In fact, migrants can only express their will to apply for international protection via Skype at times which are set on the basis of their language (for example, for those who speak Arabic an hour per week is envisaged during which they may manifest this intention). The body which is tasked with collecting expressions of this will is the **asylum office which is deployed on the territory, which is also present in Thessaloniki, which only has two containers and very limited human and financial resources** (a detailed report is attached in Doc. 2). Until a few months ago, UNHCR workers used to collect the names of those who wished to submit an application for international protection and set an appointment between them and the members of the asylum office. However, due to the large number of names that were passed on, this service had been interrupted.

Hence, migrants who arrive from the frontier with Turkey and the islands are photo-identified and have their fingerprints recorded in the Eurodac database, indicating only that they have entered the EU's territory through the Greek border (Eurodac 2).

The legal information activity conducted by UNHCR is undertaken through messages in different languages which are provided with the help of a microphone. Sometimes the workers supposedly go to the tents to raise awareness among migrants or they organise information groups although, during our observation, we never noticed the presence of any UNHCR members in the camp.

Likewise, UNHCR workers orally provide the necessary information to give rise to informed consent among migrants who decide to leave Idomeni and to be transferred to government-run centres set up by the Greek government and located in various cities in Greece, using a microphone.

Finally, we received confirmation that it is not possible in the government-run camps either to have access to the chance to submit an international protection application and that, instead, **access to the procedure is notoriously impeded for anyone who does not come from Syria and Iraq.**

1.3 Medical assistance in the Idomeni camp and interview with the MSF field coordinator

The field coordinator of the MSF project in Idomeni explained that there are over 600 pregnant women in the camp and the most frequent diseases are respiratory and gastrointestinal ones. Migrants often turn to MSF doctors when they return from

Macedonia: many of them cross the border and, when they are caught by the Macedonian police, they are heavily beaten. Plenty of those who try to cross the border are convinced to do so by the numerous smugglers who are present in Idomeni.

The doctor we interviewed let us know that the Greek government had asked MSF about its availability to handle the management of medical assistance in the government-run centres, but the association has refused for the time being because there are no guarantees allowing their independence and the possibility to voice criticism, **especially when conditions in the government-run centres may be extremely degrading**. In fact, he told us he visited some of these centres and found that, in some of them, there was a total lack of running water, a lack of beds in the military tents, and even the absence of an underlying piece of plastic to isolate the tent from the ground.

1.4 Unaccompanied foreign minors

Our investigation concentrated only marginally on unaccompanied foreign minors, yet it immediately emerged that there is a considerable number of unaccompanied foreign minors who mainly come from Afghanistan. **The minors, more than their families, try to cross the border with Macedonia and immediately declare that they are minors**, yet they too are caught and violently beaten in the same way by the Macedonian police. Furthermore, the situation of unaccompanied foreign minors in Greece is even worse than that of other migrants. Not only do they not have access to international protection but, as reported by activists, volunteers, Save the Children and the minors themselves, **Greek legislation provides that unaccompanied foreign minors be held in closed structures for a period of time**. This situation which is obviously intended to discourage them from declaring that they are minors, convinces many minors to claim that they are adults with the consequence of accepting to stay without any protection, even when they are clearly minors and, moreover, they do not have any adults as references they have affective ties to.

2. Visit to other self-managed camps around Idomeni, particularly Polikastro. Eko station

Among the camps which have sprung up along the road towards Macedonia, in the proximity of Idomeni we learned about the camps of the Eko gas station of Polykastro, the Hara Hotel in Evzoni and the Park Hotel in Polykastro.

On 27 March we visited Polykastro's Eko station. In an intermediate location between Thessaloniki and Idomeni, it is located around 20km. away from Idomeni. In December, it was just another transit point where the buses which carried people towards the physical border were made to stop and then set off again, staggered and organised by the Greek police. Various organisations are now present in the camp: NATURE PROJECT (Catalans) which operates to support mothers, LIGHTHOUSE RELIEF and MSF. In this camp, MSF also takes care of food distribution in the evenings. As far as we observed, UNHCR limited itself to providing tents. There are around 2,000 people in the camp, especially Syrian and Kurdish families, in a decidedly limited space.

Legal assistance is not provided other than, as usual, by activists who periodically pass through to provide basic information, often while exhibiting information sheets on relocation. It appears that nobody has submitted an asylum application.

3. Visit to the militarised government-run camps – the Neokavala camp

The Greek government has opened several government-run centres where migrants are taken when they enter through the border, thus avoiding a further increase in the number of migrants who are present in Idomeni. Hence, we visited one of these camps on 28 March, only 2 km. away from the centre of Polykastro. The camp was established in a disbanded airport facility and hosts around 3,000 people, in large tents. The very large area may be suitable for receiving further arrivals and is entirely surrounded by a fence which isolates the camp from the outside area. People may leave the camp and must return in the evening. **Visits are not allowed in the centre, and volunteers who want to bring aid can only leave it in the space outside the entrance, while access for journalists is entirely impeded. The massive presence of military personnel and vehicles is glaringly obvious.**

A part of the group asked for and was allowed a brief meeting with the person in charge of the camp, who was from the military. The person in charge who we met explained that 90% of the people in the camp came directly from the islands and were Iraqi and Syrian nationals. He noted that the International Red Cross guarantees medical care and that the material, including electricity and the camp beds which were being unloaded during our visit, was provided by UNHCR.

He explained that military personnel were entrusted the camp's management, while the police officers in the camp were the only ones allowed to lawfully use force in emergency situations which had not yet arisen. The migrants received here only have a suspended deportation document and the centre's pass. From the interview, it emerged that EASO and UNHCR representatives often enter the camp to provide legal information, whose content the interviewed military officer* was not aware of.

During the interview, another part of the group contacted guests who were leaving and entering the camp with an Arab language mediator, along the road which connects the camp to Polykastro. From these interviews which are included in detail in the attachments, beyond the poor sanitary and hygienic conditions in the camp, it emerges that **none of the interviewed migrants were able to submit international protection applications, nor did they receive any legal information concerning their legal position.**

However, some of the guests in the camp confirmed that they had met UNHCR personnel with whom they had **filled some forms to have access to the relocation programme.** Yet, the interviewed citizens confirmed that the decision arrived on around 20 March, when two UNHCR workers informed them that all the requests had been refused. The interviewed Syrian citizens then told us that they submitted new relocation requests to EASO officials. These officials could be distinguished from military personnel because their bibs were different colours. Moreover, UNHCR continues to return to the camp, collecting the names of the migrants who are here (*detailed interviews are attached in Doc.3*).

3.1 The Katerini camp – Nireas Camping

This is a government-run reception camp set up in a seaside campsite, distant from inhabited centres in an area where there are only campsites. It is around 12 km. away from the inhabited centre of Katerini.

On the date of our visit there were around 300 people there, Syrians, Afghans and Iraqis, who had transited through Athens and came from the islands. The camp had only been active for a few days. From interviews with the guests we learned that **there was no evidence of the presence of NGOs or humanitarian workers, apart from UNHCR representatives** who limit their activities to occasionally conducting a census of the people who are here and their nationalities. In this camp, as well, volunteers are not allowed to enter and there are no mediators and translators; instead, the presence of military personnel and police officers is massive, in this case as well. **Medical assistance is not provided**, but accompaniment to an A&E department is organized for urgent cases. Accommodation is arranged partly in bungalows which are equipped with heating, fridge and services where hot water is available; others stay in tents for 6/8 people which are not isolated from the ground (*a map and photographs are attached in Doc. 4*).

3.2 The government-run Diavata military camp

The Diavata military camp is around 10 km. to the north of Thessaloniki. Volunteers are forbidden entry unless they are registered with an international organization. The camp is enclosed by a metal fence; the entry point is marked by a gate and a level crossing bar, which is under constant surveillance by the Greek police.

The camp currently hosts around 2,500 people, mainly Syrian and Iraqi migrants. Most of them are composed by family units, but single adult men are also present. Some of them come from the Greek islands, others from the Idomeni camp.

The people hosted in the camp are registered, a procedure at the end of which they receive a pass. As is written on the pass, **the camp is defined a “relocation centre”**.

People are placed in large white tents; some of them have camp beds inside them, while others (most of them) do not have any camp beds. People are also staying in the container-caravans.

The camp is equipped with electricity and electric posts where mobile phones can be charged, hygienic services and an infirmary.

The following organizations are present in the camp: UNHCR, MSF, EASO and IOM.

The UNHCR worker we interviewed explained that they only deal with vulnerable cases (usually women with children) and providing legal information, both within the Diavata camp and in the nearby camps.

We met a person inside the camp who managed to have access to the relocation procedure, whereas others only had the “suspended deportation” document and others still were not aware of any legal information whatsoever.

4. The legal framework

The observation we carried out was necessarily partial and had to deal with a situation which was changing very quickly.

Nonetheless, the violations of the international and EU normative frameworks were blatant.

4.1 On the information provided and the possibility of submitting an application for international protection. Violation of art. 33 of the Geneva Convention, of the Procedures Directive and of art. 3 of the ECHR

First of all, the possibility of submitting a request for international protection is undoubtedly prevented. Migrants arriving from Syria, Iraq and from many other states where fundamental human rights are not respected and personal safety is constantly under threat **are not given the chance to ask for international protection** and hence remain at risk of repatriation to their home countries. Such a situation evidently contravenes **the 1951 Geneva Convention on the Status of Refugees, whose art. 33** lays out the non-refoulement principle which, instead, requires that protection must be guaranteed to people who have fled their country and run the risk of suffering inhuman and degrading treatment. In fact, the impossibility of having access to international protection or to any other procedure which guarantees an effective form of appeal against repatriation decisions (in accordance with art. 13 of the ECHR) prevents an effective and serious evaluation of the risks that each migrant may run if they were repatriated, whereby their safety and lives may be in danger. In fact, there is a further violation, of art. 3 of the ECHR, as migrants are exposed to the risk of being sent back to countries where they are not protected from the risk of *“being subjected to inhuman or degrading treatment or punishment.”*

This situation is worsened by the fact that upon their arrival in Greece, they receive a suspended deportation order whose length varies depending on nationality, as detailed above. In concrete terms this means that foreign citizens run the risk of repatriation when the envisaged term expires, without a competent authority having been able to receive their protection request.

By systematically impeding access to the international protection procedure, the Greek government incurs in a violation of the principles and of the purpose of the **Procedures Directive 32/2013 EU** which outlines common procedures for granting and withdrawing international protection status with the main objective *“to further develop the standards for procedures in Member States [...] with a view to establishing a common asylum procedure in the Union”*. Even before the possibility of having access to the international protection procedure, the Directive provides for **a duty of information and counselling** *“where there are indications that third-country nationals or stateless persons held in detention facilities or present at border crossing points, including transit zones, at external borders, may wish to make an application for international protection”*. In such situations, member states must provide information concerning the possibility of submitting a request for international protection, **while also guaranteeing interpreting services** insofar as they are required to enable access to the asylum procedure.

The *memorandum* of the Procedures Directive also unequivocally sets out the **effective right to have access to the international protection procedure**, when this is necessary *“in the interests of a correct recognition of those persons in need of protection”*. In particular, *“every applicant should have an effective access to procedures, the opportunity to cooperate and properly communicate with the competent authorities so as to present the relevant facts of his or her case and sufficient procedural guarantees to pursue his or her case throughout all stages of the procedure”*. Concerning

effective access to the international protection procedure, the memorandum's point 26 continues, specifying that "*With a view to ensuring effective access to the examination procedure, officials who first come into contact with persons seeking international protection, in particular officials carrying out the surveillance of land or maritime borders or conducting border checks, should receive relevant information and necessary training on how to recognise and deal with applications for international protection*".

Finally, the Directive's art. 4 requires that member states designate a **determining authority for all procedures responsible for an appropriate examination of applications, ensuring that it is provided with adequate means**, including sufficient competent personnel, to carry out its tasks.

Each of these provisions did not apply in any way to the facts we observed, as described above. The migrants we interviewed did not have access to any legal information on the right to apply for international protection in spite of them coming from countries which are notoriously affected by very serious situations of widespread violence. Moreover, the procedure which uses Skype to enable people to express their will to request international protection does not guarantee effective access to the procedure, materially impeding the possibility of exercising their right. **Thus, access to the procedure is obstructed by a complete lack of information and especially by the material impossibility of contacting the competent asylum office** -which, in any case, is severely lacking in human and structural resources- to receive expressions of a wish to apply for asylum.

4.2 On the risk of suffering inhuman and degrading treatment. Violation of art. 3 of the ECHR

What emerges from the situations we observed is the absolute destitution which asylum seekers, unaccompanied minors and vulnerable family units are living in. The Greek state should guarantee reception and assistance systems which take the vulnerability of the people concerned into account. On the contrary, these people have been reserved a degrading treatment which does not respect their dignity, insofar as they are effectively made to live in self-managed camps, inside tents, without running water, lighting, in very poor hygienic-sanitary conditions. The situation in the government-run camps is only slightly better. These absolutely makeshift conditions in which there is a risk to their physical wellbeing without any form of assistance and socio-sanitary monitoring makes the violation of art. 3 of the ECHR obvious, insofar as it envisages that "*No one shall be subjected to torture or to inhuman or degrading treatment or punishment*".

4.3 On family reunification. Violation of the Dublin Regulation, art. 8 of the ECHR and art. 7 of the EU Charter of Fundamental Rights

There are very many migrants who ask to be able to join their relatives, spouses, children, brothers and sisters who have already been granted international protection in other European states.

Among the instruments of EU law which enable family reunification for migrants who arrive in the European Union's member states, EC Regulation no. 604/2013, the Dublin III Regulation, is particularly useful for our purposes.

Arts. 9 and 10 of the **Dublin III Regulation** provide that the competent state for examining the application for international protection submitted by a member of the family of an asylum seeker or of a beneficiary of international protection who is already in the territory of a member state, **is the member state in which the beneficiary or asylum seeker is residing.**

Family member is understood as **the spouse of the applicant** or his or her unmarried partner in a stable relationship, where the law or practice of the member state concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals and **children who are minors**. In cases involving unaccompanied foreign minors, it is understood as **the father, mother or another adult responsible** for the applicant on the basis of the law or practice in the member state where the adult resides.

Moreover, the member state in which the wish to request international protection has been expressed and which proceeds to determine which member state is competent, or the member state responsible, may, at any time before a first decision is reached as to the substance of the case, request that another member state take charge of an applicant in order to proceed to the reunification of people bound **by any family relation, for humanitarian reasons based, in particular, on family or cultural considerations.** Hence, this so-called humanitarian clause promotes the reunification of the applicant with his or her family which is residing in a member state, even beyond the strict definition of a family member detailed above.

The activation of such instruments which are envisaged by EU law to enable family reunification is materially impeded in Greece. In fact, **the Dublin Regulation cannot be applied where migrants do not have access to the international protection procedure**, which is indispensable to invoke the aforementioned provisions.

This situation contravenes the overriding right to family unity provided for by art. 8 of the European Convention on Human Rights and art. 7 of the European Union's Charter of Fundamental Freedoms, which envisage that "*Everyone has the right to respect for his private and family life, his home and his correspondence*". European case-law, particularly that by the ECtHR, has regarded the right to family reunification as falling within the combination of legal guarantees set to safeguard the family, understood as "*the natural and fundamental unit of society*". This represents a direct manifestation of the principle of family unity, because it tends to favour the reunification of family members in a country other than their home country. In fact, the exclusion of a foreign citizen from the country where their closest relatives live may constitute an interference in the right to respect for family life, which is safeguarded by art. 8.1 of the ECHR. Such an interference, in accordance with art. 8.2, must be "in accordance with the law", it must have a "legitimate purpose" and must be "necessary in a democratic society", that is, proportionate in relation to its purpose. The rights guaranteed in this provision basically have the scope of protecting individuals from arbitrary interference by public authorities in their private sphere, particularly in their private or family life, guarantees which have gradually reduced the discretionary power available to states when it comes to regulating this matter and which have determined the birth of the state's positive duties concerning effective respect for private life for the purpose of eliminating obstacles to the full development of someone's personality.

4.4 On access to the relocation programme

The Council of the European Union's decisions no. 1523 and 1601 of 2015 introduced the relocation programme in member states for asylum seekers of specified nationalities, including Iraqis and Syrians who were in Italy and Greece, into the European landscape.

The decisions expressly provide that **only asylum seekers** may have access to the procedure, that they must be **informed** about the relocation procedure before a decision is made on the substance of their case, and they have a right, after a decision is made but before the relocation is carried out, to be informed in writing about **what state they will be relocated to**. Generally speaking, all the legal and procedural guarantees contained in the Dublin Regulation are applicable in any case, including the right to an effective remedy, as is also recalled in points 30 and 35 of the Decisions' preamble.

Moreover, it must be highlighted that although asylum seekers do not have the faculty to choose their relocation country, **an assignment criterion based on family relations is envisaged in order to guarantee family unity**, in cases when asylum seekers already have family members in other EU states. Hence, the relocation measure may also be suitable to satisfy many Iraqi and Syrian migrants' requests for family reunification.

Nonetheless, although many of the interviewed citizens are aware of the possibility of having access to the relocation programme, none of the migrants interviewed in Idomeni and in the other self-managed camps has ever had the possibility to have access to it.

Those who have submitted applications for relocation in the government-run camps have not received information concerning the preferential criterion which promotes family reunification, and they have not previously submitted an international protection request. Rejection of their relocation applications were given orally by UNHCR workers without any written document detailing the reasons for refusal which they may have filed an appeal against. In other government-run centres, EASO workers transmit relocation applications anew, for which the outcomes have not been received yet.

4.5 New scenarios arising after the EU-Turkey agreement.

This situation is destined to change again following the implementation of the EU-Turkey agreement which leaves plenty of questions unanswered, especially considering the very serious human rights violations which migrants are exposed to in Greece, first among them the impossibility of having access to international protection. Having seen such a widespread violation which is tolerated by the Greek government and by the bodies entrusted to safeguard and provide guarantees to them alike throughout the national territory, we can imagine that it is also frequent in the numerous hotspots located along the border and on the islands, access to which by volunteers and journalists is impeded. These centres may become key hubs for the future implementation of the EU-Turkey agreement. In fact, considering that every migrant must be given the effective possibility of submitting an international protection request, it will be necessary to ascertain whether the application for international protection will be examined individually before a decision of inadmissibility is reached in accordance with art. 33 of the Procedures Directive to evaluate possible obstacles to the return of migrants (Syrians and others as well) to Turkey. It will also be important to check whether the migrants whose international protection application is deemed inadmissible will have their right to an effective appeal recognised, allowing them the possibility to stay in Greek territory for the full length of the appeal and ensuring adequate legal protection. Finally, the legal situation of migrants in

the government-run centres is still unclear and, without access to the international protection procedure, they may see their suspended deportation document expire and hence be exposed to the risk of refoulement or repatriation.

Attachments to the report

- 1) photograph of the suspended deportation document
- 2) report on the visit to the asylum office in Thessalonika
- 3) transcript and analysis of the interviews with migrants in the Neokavala centre
- 4) some photographs of the Neokavala centre
- 5) map and photographs of the Katerini camp

For in-depth information and updates on the distribution and population in the camps and government-run centres in Greece:

<http://data.unhcr.org/mediterranean/country.php?id=83>

On the regulations and legal information provided by the info point in the Idomeni camp:

<http://informationflyers.wix.com/stayrebell>

UNHCR statement on the implementation of the agreement:

<http://unhcr.it/news/lunhcr-fa-appello-affinche-siano-attuate-misure-di-tutela-prima-che-inizino-i-ritorni-previsti-dallaccordo-ue-turchia>

On the distribution of camps and government-run centres:

<https://www.google.com/maps/d/viewer?mid=ziHCRQ3UWvzI.kQ0MHXYkGgUI>

On the volunteers association Team Aris which is present in Nea Chraniw, another government-run centre: <http://www.otoposmou.gr/>

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<http://www.asgi.it/asilo-e-protezione-internazionale/idomeni-analisi-giuridica-grecia/>