OBSERVATIONS IN GREECE

THE RIGHT TO ASYLUM AND ITS APPLICATION FOLLOWING THE EU-TURKEY AGREEMENT (DECLARATION) DATED 18TH MARCH 2016

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OVERVIEW
Method, issue under assessment, and main conclusions

I. METHOD

Between June 15th and 19th 2016, a team of around forty people (lawyers, legal advisors and mediators1), coordinated by A.S.G.I.2, visited six different areas in Greece3, aiming at carrying out a juridical observation of what is happening in the country, following the Declaration (hereinafter Agreement4) signed March 17th and 18th, 20165 by the heads of state and the Government of the European Union and Turkey, and known as the “EU-Turkey statement”. During the inspection the team visited a number of government camps, run by various organisations in accordance with the government, i.e. Katsika, Konitsa, Doliana (on the border with Albania), Mantamados, Pikpa, Kara Tepe (Lesvos), Souda, Delpite and Vial (Chios), Drama, Kavala, Softex (near Thessaloniki), Elliniko, Schisto, Eleonas and Skaramangas (Athens). The team managed to conduct formal and informal interviews with officials from the Greek Asylum Service (the competent administrative authority in charge of processing the asylum applications),


2 Association for Juridical Studies on Immigration, www.asgi.it and with the vital support given by Medici Senza Frontiere (MSF www.medicensanzafrontiere.it). We would also like to thank ECRE, the European Council for Refugees and Exiles (www.ecre.org), and GISTI, Groupe d’information et de soutien des inmigrés (www.gisti.org/spip.php?page=sommaire) for their fundamental contribution, especially during the preparatory phase of our research. The idea for this research came about during the first advanced training course “Scuola di Alta Formazione” for legal advisors specialising in the field of international protection, that was organised in Rome by ASGI, between November 2015 and May 2016. Many of those who travelled to Greece were students from the school, and their support proved invaluable, both during the preparatory phase and the journey itself. For more information on the school, visit http://www.asgi.it/notizia/2016-roma-corso-operatori-legali-specializzati-protezione-internazionale

3 Athens, Thessaloniki and surrounding areas, Lesvos, Chios, land borders between Greece and Albania, and between Greece and Turkey.

4 Juridically speaking, the declaration is ambiguous, its content substantially similar to an international agreement, while ignoring the necessary juridical formalities, to this regard see the comprehensive piece by Chiara Favilli, “La cooperazione UE-Turchia per contenere il flusso dei migranti e richiedenti asilo: obiettivo riuscito?” (The EU-Turkey agreement to limit the flows of migrants and asylum seekers: goal reached?), in Diritti umani e Diritto internazionale, 2016, 2, pp. 1-22 (http://www.sidi-isil.org/wp-content/uploads/2016/05/Chiara-Favilli.pdf); also M. GATTI, “La dichiarazione Ue-Turchia sulla migrazione: un trattato concluso in violazione delle prerogative del parlamento?” (The EU-Turkey declaration on migration: a violation of parliamentary prerogatives? http://rivista.eurojus.it/la-dichiarazione-ue-turchia-sulla-migrazione-un-trattato-concluso-in-violazione-delle-prerogative-del-parlamento).

5 The declaration has never been published, and probably took the form of a simple oral agreement. It is also for this reason that its contents must be read together with the conclusions of the European Council dated March 17th and 18th, 2016, and with the communication from the European Commission dated March 16th, Next operative steps in EU-Turkey cooperation in the field of migration, http://europa.eu/rapid/press-release_IP-16-830_it.htm. The diplomatic exchanges between the EU and Turkey have focused on the issue of readmission for a long time now. An important result achieved by the European Union and Turkey prior to the March agreement consisted of the EU-Turkey Joint Action Plan, enforced November 29th, 2015 and aimed at managing the “refugee crisis” through border controls and the implementation of protective measures, particularly towards Syrian citizens (see the February 2016 report on its implementation http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/managing_the_refugee_crisis_state_of_play_20160210_annex_01_en.pdf).
officials from major NGOs and UNHCR, a large number of specialist lawyers, various civilians involved in dealing with incoming migrants, and dozens of asylum seekers. After June 20th 2016, the network thus created enabled the team members to keep on receiving information, both directly and indirectly, and to update this report in real time.

II. THE ISSUE UNDER ASSESSMENT

The EU-Turkey Agreement enforced March 18th, 2016 is the result of a complex framework of cooperation between the EU and Turkey, established several years ago and representing the most significant example of the new policy adopted by the EU, that is aimed at considerably slowing the flow of foreign citizens without an entry visa. Such new policy that is based on the agreement with third countries of transit and deals with the use of juridical instruments, had played so far only a marginal role. Through the agreement enforced March 18th, 2016 the EU makes an attempt at implementing in Greece a new model, that shifts away from the previous asylum seekers reception logics, while prioritising instead an approach aimed at limiting the flow of migrants.

This goals is being pursued through the three main areas of the March agreement:

The obligation to repatriate all “illegal migrants”, who entered Greece from Turkey after March 20th, even if they submit an asylum application but that is deemed to be unfounded or inadmissible.

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6 The organisations include: MSF, Praksis, Solidarity Now, Jesuit Refugee Service, Hellenic League for Human Rights, OXFAM, Safe Passage UK, Save the Children, Norwegian Refugee Council, Danish Refugee Council, Solidarity Corps, olVIDAdos, Caritas Hellas.

7 The reports by the individual groups can be found at the following link: https://pushandback.com/esperimento-grecia

8 For more information on the process of cooperation and the role played by the European Agenda on Migration, presented May 13th, 2015, see Favilli, ibid.

9 It is important to read this agreement in the light of the consideration repeatedly reiterated in many documents published by the European institutions, primarily the European Commission, which considers the cooperation with both neighbouring and non-neighbouring third countries one of the most important instrument to manage the flows of migrants heading towards the EU. Furthermore, the cooperation with Turkey, has always been considered a strength and a very positive example, to be followed in the relationships with other countries: by way of example, see the European Agenda on Migration, published by the EU Commission May 13th, 2015, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_it.pdf. The incipit of the communication issued by the EU Commission COM(2016)385 June 7th, 2016 (Communication on establishing a new partnership framework with third countries under the European Agenda on Migration, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160607/communication_external_aspects_eam_towards_new_migration_ompact_en.pdf), for example, states that, despite the efforts made up to now by the European countries to end smuggling and reduce the number of deaths at sea, the so-called migrant crisis is still ongoing and will probably worsen. This is due to economic and geopolitical factors affecting mainly the migrants’ homelands, therefore the European migrant flow management policies shall necessarily address the transit countries of the Union, in order to be more effective. “The EU-Turkey Agreement has established a new way to bring order, as for the flows of migrants, and save lives. Its impact has been immediate. To provide the necessary assistance, the new European financial instruments are helping to create a better future in the homelands of those, who otherwise would have been ready to risk their own life in the perilous journey towards Europe”. However, that agreement alone is not considered enough, and it is therefore necessary to continue along this path, whose goals include strengthening the cooperation and neighbourhood policies with third countries, to make them more independent and capable in terms of controlling their own borders, providing protection and asylum, opposing smuggling, and above all, cooperating with the Union in the repatriation and reintegration procedures. The main instrument to achieve those goals are the “compacts”, i.e. agreements concerning the relationships between the EU and some non-EU countries, with particular focus on development cooperation activities, which will be increasingly linked to the implementation of reception systems (in the countries near to the migrants’ “home”), as well as border control and repatriation systems, that shall be consistent, dependable and effective.

10 For the first time, the expression illegal immigrants was also applied to asylum seekers.

11 This measure was defined as “extraordinary and temporary, pending an end to human suffering and the restoration of public order”.

The agreement dated March 18th, therefore, starts from the assumption that Turkey can be considered a safe country (as a *first country of asylum* or *safe third country* in compliance with articles 35 and 38 of the Directive 2013/32/UE) also for the repatriation of asylum seekers, and urges Greece to adopt accelerated procedures to process asylum applications. Partly in connection with the implementation of the March agreement, Greece passed law no. 4375 April 3rd 2016\(^\text{12}\), thus modifying the fast assessment system for asylum applications via the **mechanism of inadmissibility**: an assessment method, that is not aimed at going deeply into the merits of the application, but simply at verifying, whether the asylum seekers can be forcibly sent back to Turkey (where they came from) as a first country of asylum or safe third country\(^\text{13}\). Greek law no. 4375/16, therefore, introduces a faster system for inadmissibility, according to which all asylum applications must undergo a preliminary examination and those asylum seekers, who cannot prove that Turkey is an unsafe country for them, should be forcibly returned there\(^\text{14}\). Turkey is therefore implicitly considered a generally safe country, thus making it unnecessary to assess each single application upon the merits\(^\text{15}\). In case of inadmissibility, the applicant may appeal to an administrative Commission (set up for the purpose) within 5 days, and has the right to stay on the Greek territory until the decision is taken. Nevertheless, in the first few months following the introduction of the new law, the aforementioned Commission admitted almost all appeals received, based on a case-by-case assessment of Turkey in terms of unsafe country\(^\text{16}\). On the other hand, in mid June 2016, the Greek legislator passed a **new law** modifying the composition of the Commission\(^\text{17}\), probably to ensure an approach closer to that of the Greek government, i.e. aimed at considering Turkey a safe country\(^\text{18}\). Ultimately, in the agreement of March 18\(^\text{th}\) and following steps, the EU considers essential the resort to accelerated procedures, that do not examine the asylum applications upon the merits, but rather allow the forcible repatriation of the asylum seekers to the last country of transit, that was previously regarded as a safe place.

**The obligation to repatriate** all **“illegal migrants”**, who entered Greece from Turkey after March 20\(^\text{th}\) and do not submit an asylum application, and are therefore considered **illegal economic migrants**. Repatriation should be preceded by the examination of each application on a case-by-case basis, and the foreign citizens should be informed in advance of their right to apply for asylum. To give effect to this commitment, the European Council issued the **decision of March 23\(^\text{rd}\) 2016**\(^\text{19}\) that


\(^{13}\) The team obtained a partial and informal translation of the Greek letter of the law, available at the following link: [https://pushandback.com/esperimento-grecia](https://pushandback.com/esperimento-grecia).

\(^{14}\) In particular, art. 54 and subsequent articles of the new Greek law on asylum implement articles 33 (inadmissible applications), 35 (concept of first country of asylum) and 38 (concept of safe third country) of the procedures directive.

\(^{15}\) Greece did not adopt a list of safe third countries, therefore it did not even acknowledge Turkey as such. However, the agreement made March 18th legitimates the assessment, according to which Turkey is basically eligible as safe third country, unless individual applicants can provide sufficient evidence, proving that Turkey is not safe in their specific case. In other words, the competent asylum authorities will examine the position of each individual applicant on a case-by-case basis, with the option of acknowledging them as inadmissible.

\(^{16}\) The team obtained a partial and unofficial translation of the Commission’s decision dated May 17th 2016, which can be found at the following link: [https://pushandback.com/esperimento-grecia](https://pushandback.com/esperimento-grecia).

\(^{17}\) For more details on this issue, please refer to the report.

\(^{18}\) It deals with the legislation concerning article no. 86 of law no. 4399 dated 2016.06.22. The team obtained a partial and unofficial translation of article 18, that can be found at the link: [https://pushandback.com/esperimento-grecia](https://pushandback.com/esperimento-grecia).

puts forward the enforcement of the EU-Turkey readmission agreement signed in 2014, which was initially to be enforced in October 2017, and applies instead as of June 1st 2016\(^20\). According to that agreement, Turkey shall allow the forced repatriation of all illegal economic migrants (i.e. that did not apply for asylum), who reached Greece (or other European countries) through Turkey itself\(^21\). The readmission agreement considerably strengthens a very similar agreement that was already in force between Greece and Turkey, and that sets within the recent EU more general policy\(^22\), aimed at entering into agreements with third countries of origin and of transit, and is clearly designed to limit the flows of foreign citizens\(^23\). The readmission agreement should be read together with the EU’s hotspot approach, announced in the European Agenda on Migration as far back as May 2015, and concerning Italy and Greece in particular\(^24\). As it is known, under “hotspot” the EU understands a procedure (although unlawful\(^25\)) to be accomplished at the migrants’ arrival spots, and which is aimed at ensuring (by way of administrative detention and possible resort to force\(^26\)) the migrants’ photo-identification and fingerprinting (for the purposes of the Eurodac Regulation and the so-called Dublin Regulation III), as well as at allowing to distinguish between asylum seekers and illegal economic migrants. This latter point is the one of most concern, and in Italy it has led to the most alarming abuses by the police. As will be better explained in the next section, this type of abuses is not occurring in Greece at present\(^27\), but it must be considered in perspective as a possible danger, which would make the readmission agreement much more insidious. Indeed, on this classification, as either asylum seekers or illegal economic migrants, (derives the effective possibility (or impossibility) for the rescued migrants to access to the asylum procedures. In other words, based on the hotspot approach, the possibility to be acknowledged as an asylum seeker (and not as an illegal economic migrant) depends on the information provided to the migrant by the public administration on the option to


\(^{21}\) Based on art. 4 of that agreement, Turkey, upon request of a Member State and without further formalities (except those sanctioned by the agreement itself), shall readmit all third country nationals or stateless people who do not, or no longer meet the requirements to enter, stay or reside on that Member State’s territory, if there is evidence that they entered the Member State’s territory illegally or directly, after staying or travelling through Turkey. The team acquired an outline summarising the agreement, which can be found at the following link: [https://pushandback.com/esperimento-grecia](https://pushandback.com/esperimento-grecia).

\(^{22}\) The European Commission communication dated June 7th, 2016 ([http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160607/communication_external_aspects_eam_towards_new_migration_ompact_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160607/communication_external_aspects_eam_towards_new_migration_ompact_en.pdf)) is very significant: the team prepared a brief summary of the communication, which can be found at the following link [https://pushandback.com/esperimento-grecia](https://pushandback.com/esperimento-grecia).

\(^{23}\) In this regard, it is interesting the chronological reconstruction made by the Italian cultural association Arci in June 2016, that can be downloaded via the following link [http://www.statewatch.org/news/2016/jun/analysisdoc-externalisation-ARCI-it.pdf](http://www.statewatch.org/news/2016/jun/analysisdoc-externalisation-ARCI-it.pdf).


\(^{25}\) On the illegitimacy, at least in Italy, of the hotspot approach, see: ASGI, “Crisi umanitaria: rispettiamo i principi democratici che reggono l’Unione Europea” (Humanitarian crisis: we shall respect the democratic principles governing the European Union) [http://www.asgi.it/wp-content/uploads/2016/03/2016_7_marzo_documenti_UE.pdf](http://www.asgi.it/wp-content/uploads/2016/03/2016_7_marzo_documenti_UE.pdf) and, from the blog by Prof. Fulvio Vassallo Paleologo, [http://dirittefrontiere.blogspot.it/2016/02/a-lampedusa-il-nuovo-approccio-hotspot.html](http://dirittefrontiere.blogspot.it/2016/02/a-lampedusa-il-nuovo-approccio-hotspot.html).

\(^{26}\) Refer also to the European Commission’s communication dated 2016.02.10, “Communication from the Commission to the European Parliament and the Council on the State of Play of Implementation of the Priority Actions under the European Agenda on Migration”.

\(^{27}\) While they occurred frequently until April 2016.
apply for international protection, as well as on the real possibility to express their will without being manipulated or improperly recorded. The hotspot approach enables the police to illegitimately classify many foreign citizens just rescued at sea as illegal economic migrants. At the same time, the readmission agreements allow the immediate and forcible repatriation of migrants to the last third country of transit. Finally, as numerous sentences of ECHR have shown, the police may be performing real and illegitimate collective repatriations in border areas, without the due case-by-case assessment of the foreign citizens’ legal position, who are denied any real possibility to exercise their rights. Therefore, the EU-Turkey readmission agreement (together with the hotspot approach and the common risk of collective repatriations at the border, may represent a dangerous tool for the forced, mass repatriation of potential asylum seekers from Greece to Turkey.

The commitment of Turkey in stopping the flows of migrants coming from their home region and heading for Europe. A real land and sea blockade (also supported by NATO), which Turkey should implement on its territory and territorial waters towards all Turkish citizens and other third country national citizens, regardless of their possible qualification as potential asylum seekers. Such measure is clearly intended to impact upstream, sacrificing in any case the possibility for the potential asylum applicants to submit the application for International protection in Europe.

In connection with those three commitments, the agreement dated March 18th states: 1) A considerable increase in the European funding to Turkey intended for the reception of asylum seekers on its territory; 2) The resumption of talks about Turkey joining the EU; 3) The commitment for a quick liberalisation of visas for Turkish citizens heading for Europe; 4) A resettlement programme, i.e. the so called 1:1 mechanism (establishing that for each Syrian citizen readmitted in Turkey, another Syrian citizen from Turkey should be resettled in an EU country); 5) The development of a “humanitarian admission scheme”.

28 See the case Hirsi Jamaa and others, Italy no. 27765/09 (http://curia.europa.eu/juris/liste.jsf?num=C-61/11), the Khlaifia and other cases, Italy no. 16483/12 (http://hudoc.echr.coe.int/eng#{“fulltext”:“khlaifia”,”documentcollectionid2”:“GRANDCHAMBER”,”CHAMBER”,”itemid”:“001-157277”}), and the case Sharifi and others, Italy and Greece no. 16643/09 (http://hudoc.echr.coe.int/eng#{“fulltext”:“Sharifi”,”documentcollectionid2”:“GRANDCHAMBER”,”CHAMBER”,”itemid”:“001-147702”}).

29 We refer to the operation reported by Watch the Med, we will be coming back to later. https://alarmphone.org/it/2016/06/17/watchthemed-alarm-phone-denounces-illegal-push-back-operation-with-frontex-present-4

30 Moreover, “Turkey committed on the one hand to change the protection regime for Syrian citizens, modifying the rule according to which the temporary protection shall end when the beneficiary leaves Turkey, so as to allow those, who are repatriated to qualify for such protection again; and on the other hand also agreed to treat the temporary protection beneficiaries more likely refugees, allowing them to access the Turkish labour market, besides of course meeting the other minimum reception standards, to which the EU also contributes granting its financial support. According to the Statement implementation report, Turkey did apply a law which specifies, that Syrian citizens sent back based on the new provisions may apply and receive temporary protection; this applies also to Syrian citizens previously registered in Turkey. Turkey provided assurance that all Syrian citizens readmitted to the country will be granted temporary protection upon their return” (The relevant provisions are the ones included in the Regulations on temporary protection no. 2014/6883, as emended by Regulation no. 2016/8722, found at http://mhd.org.tr/english_home.html), s. Favilli, ibidem.

31 For an amount of three billion Euros, partly borne by the EU (one billion Euros), partly borne by the Member States (two billion Euros).

32 However, as stated in the declaration of the Heads of State and Government dated March 7th, 2016, the resettlement should be kept “within the scope of the existing commitments”, therefore not exceed 54 thousand.

33 A recommendation for a Humanitarian admission programme on a voluntary basis has been applied, to start only after the establishment of the other measures agreed upon, i.e. once the route from Turkey to Greece will be considered closed (Recommendation of the Committee C(2015)9490 dated 2015.12.15 about a voluntary programme of humanitarian admission from Turkey, dated 15.12.2015.
III. MAIN CONCLUSIONS

The legal position of the asylum seekers on the land is different from that of the ones “stuck” on the islands. The two geographical positions imply the application of different norms and practices. Basically, those who arrived in Greece after March 20th, 2016, are the ones that are mainly affected by the agreement dated March 18th, 2016 (inadmissibility procedures and risk of re-admittance to Turkey) and live on the islands (some in custody) by virtue of a government expulsion ban. The other ones, who reached Greece before March 20th, 2016, live on the remaining part of the Greek territory.

Limiting the flows of migrants

The ultimate goal of the agreement dated 18th March, 2016, has been temporarily reached. The number of migrants from Turkey to Greece has been dramatically reduced34, above all through the land and sea blockade implemented by the Turkish government. The latter is supported by Nato forces, garrisoning the international waters, to spot migrant vessels and alert the Turkish Coast Guard, that in turn leads them back to the departing ports35. At the same time, some reports36 suggest that Frontex is deploying its means to patrol the Greek waters, eventually stopping the vessels of migrants and “handing them back” (under the threat of weapons) to the Turkish Coast Guard in the open sea (a practice, that if confirmed, should be classified as an illegitimate form of collective refoulment). It also appears that the number of people trying to enter Europe from Turkey is anyway decreasing, probably discouraged by the limited possibilities to reach Greece and to cross it bypassing the closed borders of Albania, Macedonia and Bulgaria37. A further disincentive has been provided by the Greek government, that in March and April carried out some forced repatriations to Turkey38. Finally, reports coming from many parties suggest that the Turkish army is resorting to violence, aiming at preventing Syrian citizens to cross the border and enter Turkey39. Currently, the number of foreign citizens waiting for the asylum

34 According to the data published by UNHCR (http://data.unhcr.org/mediterranean/country.php?id=83) in 2016 158,937 migrants reached Greece by sea, 152,476 of which arrived before April 6th, 2016. In 2015 the total number of migrants reaching Greece by sea was 856,723.

35 http://www.nato.int/cps/en/natohq/topics_128746.htm

36 https://alarmphone.org/it/2016/06/17/watchthemed-alarm-phone-denounces-illegal-push-back-operation-with-frontex-present-4

37 Please note that, precisely due to the flow of migrants reaching the Nord European countries from Greece in 2015, May 12th, 2016 the EU Council enacted an Implementing decision (EU) 2016/948, http://eur-lex.europa.eu/legal-content/IT/TXT/PDF/?uri=CELEX:32016D0894&from=IT, that encourages some Member States (Denmark, Germany, Sweden, Norway and Austria) to restore the controls at the national borders, in order to prevent the so called secondary movements of migrants within the Union for alleged security reasons. As C. Favilli wrote in his often mentioned article “it is worth noticing that the inflow of Syrian asylum seekers in Greece could not be considered as a violation of the rules on the control of EU borders, because asylum seekers have the right to enter any Member State to apply for international protection”.

38 As reported by the European Commission in a communication dated 15.06.2016 (http://europa.eu/rapid/press-release_MEMO-16-1664_it.htm), 462 people have been readmitted to Turkey based on the statement dated March 18th, 2016. As for their legal condition, the Commission reports only that they entered Greece illegally. Frontex site reports at least two operations, the agency took part to, in order to support the re-admission activities: April 4th, 2016, when 202 people were readmitted to Turkey and April 8th, when 124 migrants were taken to Turkey based on the March agreement (http://frontex.europa.eu/news/frontex-assists-greece-in-transporting-202-migrants-to-turkey-ySOnX and http://frontex.europa.eu/news/frontex-assists-greece-in-transporting-migrants-to-turkey-QqtvpJ).

procedure in Greece is limited: about 8 thousand on the islands (i.e. arrived after March 20th, 2016) and 50 or 60 thousand on the land (i.e. arrived before March 20th, 2016). The interviewed Greek authorities stated to be satisfied with the results, but the reception conditions are still inhumane and the asylum procedure timing is wearily slow. As a result, different unauthorized re-entry channels (against payment) have been activated, both in Turkey and in the homelands (including Syria) and voluntary repatriation requests are common.

I. The mechanism of inadmissibility

All asylum requests from Syrian citizens, and only those ones, undergo a pre-exam for inadmissibility (with the exception of the applicants acknowledged as vulnerable). For the asylum applicants from other countries, the use of such tool is not an option yet, as the Turkish laws does not provide for any form of international protection for them. For Syrian citizens, vice-versa, a sort of humanitarian protection is ratified, which enables the Greek authorities to demand for the application of the clause on the country of first asylum (refer to para. 35 of the directive 32/2013/EU). The interviewed Greek authorities stated that such procedure will be applied also to other nationalities (as provided by the law in general), but this will not be possible without any reform of the Turkish law. The inadmissibility procedure applies to the asylum seekers, who entered Greece after March 20th, 2016, therefore almost solely on the islands and not on the land as well.

In relatively short times, EASO carries out a short interview to verify, whether the asylum applicant has solid grounds not to be sent back to Turkey. With the exception of extremely rare cases, EASO expresses opinions of inadmissibility, that are substantially always implemented by the Asylum service, which in turns issues a decree of inadmissibility. In almost all cases, the asylum applicants exercise the right to appeal against such decree (by administrative means, within 5

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40 According to the data published by UNHCR July 13th, 2016 (http://data.unhcr.org/mediterranean/country.php?id=83) 8,475 migrants are currently on the islands and 42,065 on the land.

41 Or rather, those ones acknowledged as vulnerable through a surfacing procedure carried out with the help of UNHCR, that for sure cannot be deemed as systematic. Those applicants are, or should be, sent directly to Athens to start the procedure.

42 Turkey has ratified the Geneva Conventions of 1951, but applying the “geographical clause”. According to such clause, only asylum seekers coming from Europe can apply for asylum in Turkey. A form of temporary protection is granted to Syrian citizens only, based on the Turkish law on the legal status of foreigners and international protection dated April 11th, 2013 and on the Regulation on Temporary Protection dated October 22nd, 2014. The beneficiaries of such protection are granted limited access to basic rights and services, are not allowed to work, and until April 2016 if they left the Turkish territory they were no longer entitled to such protection. As for this, please refer to the quote from C. Favilli, the already mentioned communication (2016)349 of the European Community (http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160615/2nd commissioned report on progress made in the implementation of the eu-turkey agreement en.pdf) and the material produced by Asylum Information Database (http://www.asylumineurope.org/reports/country/turkey/introduction-asylum-context-turkey).

43 European Asylum Support Office (EASO), a European agency created in 2010 by the EU Parliament and Council, in order to support the project for the development and implementation of a Common European Asylum System, CEAS. EASO is therefore aiming at harmonizing the different asylum systems of the Member States, also supported by the national authorities. Such support materializes both helping the state authorities during emergencies and training them also in the usage of common materials and data, starting from the Country of Origin Information about the asylum applicants, in order to develop standardised acknowledging rates for international protection and equivalent asylum procedures.

44 Greece did not get a list of safe third countries, therefore the Greek authorities cannot apply any mechanism of absolute presumption of safety as for Turkey or other countries, but is instead necessary to carry out an assessment on a case-by-case basis.

45 That is without the characteristics and warranties of a court proceedings.
days and without the support of a lawyer). The appeal suspends the repatriation to Turkey and (until mid June 2016) it was almost always successful, with decisions from the Appeals Committees that recognised in those specific cases Turkey an unsafe country even for Syrian citizens. In June 2016, presumably also due to the systematic acceptance of appeals, the Greek authorities suspended the decrees servicing (the pre-exam is still carried out, but the outcome is not served on the applicants) and reformed the Appeals Committee. At the same time, the building of a detention centre is being completed on the island of Chios, which is intended for those asylum applicants, whose application has been regarded as inadmissible (and no petition has been filed or has been rejected). Ultimately, until July 2016 the mechanism of inadmissibility did not allow the repatriation of the asylum applicants to Turkey, due to the position of the Appeals Committee. However, the Greek authorities seems to be aiming at reactivating such mechanism, deemed as a key element of the new approach aimed at limiting the flows.

II. The agreement on re-admittance for economic migrants

Currently, everyone is entitled to start a procedure to apply for international protection, which makes them technically asylum seekers (as they expressed the will to follow this path) and therefore non-expellable. The only re-admittance operations that involved a high number of migrants (about 300) were carried out before the EU-Turkey re-admittance agreement entered in force (June 1st, 2016). Ultimately, the new agreement on the re-admittance of economic migrants between EU and Turkey is not currently being applied (probably also because of the Turkish government delay in submitting it to the National Parliament for approval). However, it is no inconceivable that such instrument may be activated in the future, also in conjunction with a change in direction with respect to the access to the procedure (particularly if the number of arrivals would increase again).

III. The access to the asylum procedure

Both on the land and on the islands, everyone is granted access to the asylum procedure. On the land such access ensures not to be expelled, the right to the education of minors, the right to healthcare on a par with Greek citizens, but not the right to access the labour market. However, the most concerning issues are associated to the timing, which is determined depending on the nationality.

46 For a comment about one of those decisions, please refer to page https://pushandback.com/esperimento-grecia. In June 2016 the European Commission reported that until then only two out of the 70 inadmissibility decisions issued by the competent authority in the first instance, impugned and decided, had been confirmed also by the Appeals Committee (p.4 http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160615/2nd_commission_report_on_progress_made_in_the_implementation_of_the_eu-turkey_agreement_en.pdf). The same document reports that 267 asylum applications, out of a total of 1,429 submitted on the islands until 15.06.2016, were declared inadmissible, 252 of which were impugned before the Appeals Committee.

47 As already specified the change was accomplished approving law no. 4399 dated June 22nd, 2016.

48 Such operations involved people, who did not officially submitted any asylum application. As reported by some UNHCR’s members, until May 2016, the access to the asylum procedures was highly limited, particularly for people belonging to certain nationalities, while the re-admittance agreement for economic migrants, signed years ago by Greece and Turkey, was being applied.

49 At the end of May, many NGOs operating on the territory had been pre-alerted by the Greek government about a possible sudden rise in the entries expected in July 2016 that never occurred.

50 A significant percentage of foreigners (particularly with no children) do not apply to access the procedure and prefer to remain in anonymity outside any circle (even if that could means to be expelled, resulting from the procedure opening). In such cases there is clearly a total lack of confidence in the European system and in the possibility to access relocation or anyway to be able to reach other European countries, without running the risk to be sent back to Greece or Turkey.
citizens from countries that can access relocation (and apply for it), (actually Syrians and Iraqis) are interviewed relatively quickly by EASO, to verify whether and how to apply the relocation procedure. Therefore, it deals with an interview that does not focus on the applicant’s history, but on the existence of solid grounds for the relocation in a given Member State or on the alleged detection of impedimental safety reasons. If the interview is successful, the Greek authority selects the relocation country. The applicant undergoes then a quite long interview (lasting several hours) on the most intimate and personal aspects at the embassy of the selected Member State – at least in the case of France and Holland – probably in a (rudimentary) attempt to outline the psycho-social profile of applicants that may endanger safety. In many cases, the embassy (at least the French one) rejected the relocation and the Greek authorities issued a decree of revocation of the right to benefit of relocation in any European country. Furthermore, although the interviews to assess the relocation requirements are carried out in relatively short times, the actual transfers to the country of destination occur quite slowly (in fact, at the end of June still little more than one thousand protection applicants had been really reallocated). Ultimately, the Greek authorities prioritize the relocation procedure, but its actual application remains at the discretion of the single Member States and anyway cannot be regarded as matching quantitatively (far from it) the applications submitted. The condition of the applicants belonging to nationalities that cannot access relocation is even worst (particularly Afghans and Pakistanis). Since June 2016, with the support of UNHCR, the Greek authorities have started a systematic pre-registration work (that replaces the access via Skype). It already ensures that migrants will not be expelled, but the resulting procedure is expected to be extremely long. In fact, the Greek authorities are prioritizing the relocation and queued all other procedures. In this way, the pre-registration candidates continue to remain in the same housing conditions with no right to access the labour market, in a sort of limbo that leads them to leave Greece in any available way (heading to Europe or back to Turkey and their homeland).

IV. The reception conditions and the detention in the pre-expulsion centres and in the so called hotspots

The majority of asylum seekers lives in government centres, that are set up by the Government and

51 According to the link https://newsthatmoves.org/en/iraqis-no-longer-eligible-for-relocation/ checked last July 21st, 2016, Iraqis have no longer access to the relocation programme. However, EASO appears to have confirmed that the applicants, who already submitted a protection application shall continue to have access to the programme.

52 Indeed, there are reports about a decision of the Greek government, according to which all foreigner citizens, who reached Greece after March 20th would be anyway excluded from the relocation procedure and they would be granted only the right to submit an application for asylum in Greece. That alleged practice is still to be verified.

53 UNHCR publishes periodically the data about the progress of such procedure (http://data.unhcr.org/mediterranean/country.php?id=83). The last updating dates back to July 5th, when 20,100 people appeared to be pre-registered.

54 As for this, please refer to the report published by A.S.G.I. April 3rd, 2016 and produced on the occasion of the campaign Overthefortress “Idomeni. Un’analisi giuridica sui diritti negati ai migranti” (Idomeni. A legal analysis on the rights denied to migrants), available at the page http://www.asgi.it/notizia/idomeni-analisi-giuridica-grecia.


56 It appears that, the Greek authorities, in most cases, require the transfer from informal to government camps as a prerequisite to start the pre-registration procedure. Such request is often perceived as a blackmail, as many applicants would prefer not to live in government camps, where the conditions are even worst recently and one suffers a greater degree of isolation, compared to the camps run by international volunteers and locals.

57 There are still informal camps (as in the port of Athens), run by bodies other than the Government (see further down in this report) and also some reception realities in city buildings (particularly in Athens), that surely guarantee living conditions, which exceed by
(almost always) in **disrepair, with no services whatsoever** and unsuitable to meet the primary needs of the guests\(^58\). The **right to information** of foreign citizens is almost completely infringed: rarely those people manage to get sufficient information (and solely from non-governmental officials).

On the islands and the land there are **different typologies of detention centres**, closed facilities where foreign citizens are forced to live for identification or expulsion-preparatory purposes\(^59\). Despite the prohibition sanctioned by the Greek law, there are **many unaccompanied foreign minors**, living in detention, often together with adults.

In many cases, both minors and adults are **kept in detention for longer periods**, than the ones sanctioned by the national legislation, but it is actually extremely complex to exercise the **right of defence** abstractly provided for against those forms of abuse.

Although on the islands the detention by law is considered an exceptional measure, it appears to be applied **systematically** to inflowing migrants and asylum seekers, with no apparent assessment of their individual conditions, nor the related measures are translated into a language that the ones concerned can understand. **Looking forward**, such practice is not likely to stop. On the contrary, it emerged that the existing detention facilities are being enlarged and renovated, in anticipation of a more massive usage, also for deterrence purposes.

**In general**, we detected a high level of **discretion** in applying or not (and for how long) the measure of administrative detention and very limited real possibilities to obtain **judicial protection**. The resort to such measure certainly appears more massive after the agreement dated March 18\(^{th}\), 2016, and, overall, different factors (among which the new centres being built) lead to assume that administrative detention will increasingly become a “**major player**” in the asylum procedure, both in the access phase (identification) and in the final one (aimed at repatriation to Turkey or the homeland).

V. The involvement of non-state actors

Non-state actors play a **leading role** in all procedure phases (i.e. asylum, re-admittance and repatriation); in particular, the European agencies Frontex and EASO, the international ones like UNHCR and the NGOs, but also private security companies. The intervention of the European Union in Greece, aimed at managing the so called **refugees crisis**, is to be detected not only in the changes in the domestic legislation to adapt to the agreement with Turkey, but also in the massive resort to EU agencies' officials in different key moments. Let’s consider first of all the **interviews for relocation and the ones to assess the admissibility** of the asylum applications, that are both carried out by EASO’s members. Their opinion is almost always slavishly followed and signed by Asylum Service’s officers. Furthermore, to guarantee the safety (also) of its officers inside the **hotspots** on the Island, EASO hired the well-known private security agency G4S, which operates inside, as well as outside the detention and registration centres on the islands, such as for instance at the centre of Vial in Chios. The legislation amendment dated June 17\(^{th}\), 2016\(^60\) grants EASO even the possibility to

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\(^{59}\) See further down in this report, where a dedicated section is available.

\(^{60}\) See law no. 4399/2016
assess the asylum application upon the merits. Overall, the agency seems to be playing in Greece a much more incisive and leading role, that the EU would want to grant the agency by law for all Union’s\textsuperscript{61} countries in the near future.

The borders control is actually co-managed by the Greek authorities in co-operation with Fronto\textsuperscript{x}, providing support through its ships and means. The agency is a major player also in repatriations and re-admissions, identification activities and registration procedures for the migrants, which is in line with the increasingly important role the agency is playing also in the current reform proposal of the EU\textsuperscript{62}.

The pre-registration activities, accomplished with the vital support of UNHCR, are essential to understand how many people are actually on the Greek territory, their characteristics, as well as how to start the asylum procedure\textsuperscript{63}. UNHCR carries out also humanitarian intervention operations, plays an important role in the management of some government centres (such as for instance in Lagkadikia, near Thessaloniki), provides information to some potential asylum applicants\textsuperscript{64}, participates in the surfacing and protection activities for vulnerable asylum seekers, draws up the list, from which the Government (also with the new regulation) chooses one member of the Appeals Committee\textsuperscript{65} and provides other services supporting the Greek authorities also in the detention camps (mainly information and protection activities for the vulnerable categories)\textsuperscript{66}. Overall, UNHCR manages in a very limited way to support the Greek authorities and to partly improve the asylum seekers’ conditions. At the same time, it has implicitly endorsed the EU decision to consider Turkey as a safe country\textsuperscript{67}.

Finally, both Greek and international NGOs are mostly committed to improve the living conditions of the asylum seekers and to provide them with more information and support, in order to obtain the right of defence\textsuperscript{68}. However, also in that case, the resources, that such organisations are able to

\textsuperscript{61} As for this, please refer for example to the communication of the EU Commission dated 06.04.2016 on the possible actions to be implemented in order to develop a real Common European Asylum System, in which it has been specified that “The Commission will propose to amend EASO’s mandate so it can play a new policy-implementing role as well as a strengthened operational role and providing sufficient financial resources and legal means for that purpose” (http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160406/towards_a_reform_of_the_common_european_asylum_system_and_enhancing_legal_avenues_to_europe_-_20160406_en.pdf).


\textsuperscript{63} According to the statements made by an UNHCR’s officer during an interview at the administrative headquarters in Athens, it would seem that at present that UN agency is operating outside a memorandum of understanding agreed upon with the Greek government, establishing its role and mandate within the framework of the asylum procedures. In the net it is available only a memorandum dating back to 2002 (http://webcache.googleusercontent.com/search?q=cache:6DYki8hNJosJ:www.greekhelsinki.gr/bhr/english/countries/greece/un_25_06_02.doc+&cd=1&hl=it&ct=clnk&gl=it).

\textsuperscript{64} Without any specific agreement with the Greek government on that.

\textsuperscript{65} Please, refer to para. 86 law no. 4399/2016. A non official translation is available on https://pushandback.com/esperimento-grecia.

\textsuperscript{66} The interviews suggested in particular the continued presence of UNHCR in the detention camp in Moria on the island of Lesvos.

\textsuperscript{67} Albeit requesting Turkey to improve a.s.a.p. its standards in terms of human rights protection. See the communication issued April 1\textsuperscript{st}, 2016, to be found at the following link http://www.unhcr.org/56fe31ca9.html.

\textsuperscript{68} In some cases, the NGOs carry out advocacy tasks as well. Finally, it appears particularly interesting the MSF’S action of criticism addressing the EU policies, aimed at limiting the flows through agreements with third countries like Turkey. Please, refer to the communication dated June 17\textsuperscript{th} 2016 “Migrzione: pericoloso approccio dell’UE minaccia il diritto d’asilo in tutto il mondo” (Migration: dangerous EU approach threatens the right of asylum all over the world, http://www.medicisenzafrontiere.it/notizie/news/migrazione-il-pericoloso-approccio-dellue-minaccia-il-diritto-di-asilo-tutto-il-mondo).
guarantee are very limited compared to the real needs and therefore have a very limited overall impact on the living conditions and the protection of the asylum seekers’ rights.

VI. An overview of the violations detected

In the final part of the report we analyse the several violations of the European and international legislation that have been detected, and we suggest some measures that might be implemented:

- **Asylum Procedure Directive, 2013/32/EU**, para. 31 addressing the right to a quick conclusion of the asylum procedure;
- **Asylum Procedure Directive, 2013/32/EU**, para. 12 and 19 addressing the right of the asylum seeker to obtain suitable legal information;
- **Asylum Procedure Directive, 2013/32/EU**, para. 46 addressing the right to a real appeal, in particular with reference to the inadmissibility procedure;
- **Asylum Procedure Directive, 2013/32/EU**, para. 33, 35 and 38 addressing the right according to which the asylum seeker during the inadmissibility procedure is entitled to elect a third country (i.e. Turkey) that really configures as country of first asylum or safe third country.
- **Reception Conditions Directive, 2013/33/EU**, para. 17 and 23 addressing the right of reception conditions, that ensure a suitable quality of life to adults and in particular to minors.
- **Reception Conditions Directive, 2013/33/EU**, para. 10 addressing the right of minors not to be kept in detention, unless in exceptional cases.
- **Reception Conditions Directive, 2013/33/EU**, para. 21, addressing the right of the vulnerable categories to be identified and protected through a systematic and detailed assessment.
- **Reception Conditions Directive, 2013/33/EU**, para. 7 addressing the right to free circulation of the asylum seeker, for the systematic and generically applied prohibition to leave the island territory.
- **Reception Conditions Directive, 2013/33/EU**, para. 8 and 9 addressing the right of the asylum seeker not to be kept in detention outside the scope of the presuppositions and without the warranties provided for his/her own protection.
- **EU Charter of Fundamental Rights**, para. 4 addressing the right of every human being not to be treated in an inhuman or degrading way and para. 18 and 19 addressing the right of asylum and the prohibition of mass refoulments.
- **European Convention of Human Rights**, para. 3 and 5 addressing the right of every human being not to be treated in an inhuman or degrading way (also referring to the repatriation to Turkey) and not to be deprived from freedom in the cases and ways established by the law.
- **International Covenant On Civil And Political Rights**, para. 7 (as interpreted by the Committee for Human Rights according to the General Comment no. 20 dated 10/03/1992), addressing the right of every human being not to be exposed to the danger of torture or other cruel, inhuman, degrading punishments or treatments upon return to another country (in particular to Turkey).
- **Treaty on the Functioning of the European Union**, para. 218 for violating the prerogatives of the European Parliament, establishing March 18th, 2016, several perceptive contents in a simple Statement, instead of using the form of the agreement.
Once borders were closed down, thousands of refugees who had arrived in Greece were blocked on dock E1 of Piraeus, Athens, June 2016.
Once borders were closed down, thousands of refugees who had arrived in Greece were blocked on dock E1 of Piraeus, Athens, June 2106
CHAPTER 1
Current situation and standard practices applicable following the agreement of March 18th in Greece

I. ACCESS TO THE ASYLUM PROCEDURE

On the islands. Lesvos and Chios

What happens upon landing?
Upon landing, either at the ports, following a rescue and relief operation, or along the coast, migrants are asked to get onto coaches, to be transferred, sometimes for a fee, to registration camps or, at least on the island of Chios when large influxes of migrants are involved, to unofficial camps that have sprung up in the city centre, to be then transferred to the registration centre over the following days. As for the island of Lesvos, at the time of the visit, all foreign nationals reaching the island were immediately transferred to the detention centre in Moria, owing to the low frequency of arrivals. The centres for the migrants’ registration and identification are Moria camp on Lesvos and Vial camp on Chios, respectively.

How does one gain access to the procedure to obtain international protection?
All migrants – irrespective of nationality – can express their will to seek asylum. Most recently, the main procedure to do that is through registration. Indeed, on Lesvos and Chios, migrants are subject to registration and screening to determine their nationality. These operations are accomplished by Frontex personnel and the Greek police. At that stage, migrants are asked questions about the presence of relatives in other EU countries, the condition of vulnerability and any possible risk for the applicants’ safety in Turkey. Foreign nationals are also asked, whether they intend to apply for international protection. Finally, they are photo-identified, and their fingerprints - as confirmed by Frontex’s spokesperson - are entered in Eurodac, both in the case of migrants applying for international protection, and of migrants not seeking asylum.

Is any distinction made based on nationality?
The registration phase, that the migrants may access regardless of their nationality, is followed by a second phase involving at present Syrian nationals only. People of other nationalities actually find themselves in a stalemate, as of the end of March they have no longer access to the procedure next steps.

Future Scenarios. The Chios Asylum Service holds that only asylum applications lodged by Syrian nationals will be preliminarily assessed as regards their admissibility, while citizens belonging to other nationalities will actually access the procedure to apply for international protection directly.

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69 Many migrants of Pakistani origin interviewed in Chios exhibited slips of paper of varying sizes that, up until a few weeks ago, were being issued by the Greek police and UNHCR. These documents, with the asylum seekers first name and surname, expressed their will to apply for international protection, for it to be recorded by the Asylum Office. Many migrants – especially non-Syrians - tracked down in the country by organisations and forces of law and order, were invited to state their will to apply for international protection, in order to avoid being deported from the Greek territory.
based on the merits of their application. However, this position does not appear to be shared by other experts and operators, including UNHCR’s spokesperson and some lawyers interviewed, who, on the contrary, believe that all applications for international protection will be subject beforehand to the admissibility procedure irrespective of the applicants’ nationality.

**Who carries out the screening regarding vulnerability?**

The screening for vulnerability is carried out both by the police during the interview at the time of registration, and by the *First reception service*, managing the reception services. On Chios, however, the island only official centre is Vial camp, therefore the screening procedures are formally carried out only for people staying there. UNHCR and non-governmental organisations are entrusted with the task of preparing lists of applicants considered more vulnerable and who are in other unofficial camps. On Lesvos, UNHCR carries out vulnerability screening in the Moria centre too.

Ascertaining vulnerability is a delicate and important stage, in particular because the applications of those belonging to a vulnerable category are assessed directly upon the merits, without undergoing the admissibility procedure, or prioritized for the application admissibility assessment. However, several sources reported that timing can vary also for members of the same family, with the risk of families being separated. On Lesvos, UNHCR confirms that such a standard practice is regarded as really unfair by several parties and that the High Commissariat itself, together with other organisations operating there, is trying to get it changed.

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**Art. 14 co. 8 l.n. 4375/2016 (Greek law on asylum)**

Vulnerable categories include: “a) unaccompanied minors; b) people with a disability or suffering from serious illness or an incurable disease; c) elderly people; d) pregnant women or women who have recently given birth; e) single-parent families with minor children f) victims of torture, rape or other serious forms of violence or sexual exploitation, whether psychological or physical, people suffering from post-traumatic stress disorder, in particular shipwreck survivors and relatives of victims; g) victims of people trafficking”.

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On the mainland (Thessaloniki and the surrounding area, Athens, and near the border with Albania)

Who is on the mainland?

It is estimated that 50,000 to 60,000 migrants are on the mainland, primarily coming from Syria and Afghanistan but also from many other countries, including Turkey (Turkish nationals mainly from the Kurdish community)\(^70\). Most of them, as confirmed by all organisations interviewed, arrived in Greece prior to March 20th, mainly via the islands of Lesvos, Chios, Leros, Samos and Kos. An initial “registration” was already carried out on the islands, including photo-identification and fingerprinting, as well as entering of personal data into the Eurodac database\(^71\), as already mentioned. Anyone with access to such a procedure could leave the islands and reach the port of Athens, pursuant to the issuance of an order allowing applicants to stay on the Greek territory and suspending for a given period\(^72\) the State’s power to forcibly remove illegal immigrants. From Athens, many moved on, trying to reach the Greek borders.

Furthermore, also applicants arrived on the islands after March 20th and identified as vulnerable can reach the mainland, as well as those ones, who to date applied for asylum and their application has been deemed as admissible and is due to be analysed upon the merits (both in the first instance or following acceptance of the appeal by the Appeals Committee).

How does one gain access to the procedure to obtain international protection? The pre-registration procedure.

Up until May 2016, in order to begin either the procedure to obtain international protection or the procedure for relocation or reunification with family members residing in another EU country, it was necessary to make an appointment at the regional offices of the Asylum Service, through the so-called Skype procedure, enabling applicants to formally apply for protection and undergo the official photo-identification and fingerprinting process. This procedure entailed remarkable inconveniences, both because of the great difficulties in getting access to the system, and because the offices authorised to receive applications via Skype were open just a few hours per week\(^73\).

The result of this standard practice arose from the factual impossibility to access the procedure to obtain protection (like those for relocation and reunion), irrespective of the country of origin.

In order to overcome this stalemate, the Greek government undertook to record all application for protection, relocation and reunion from people on the mainland, through the procedure known as “pre-registration” that should be completed by July.

Pre-registration was supposed to take place in special hubs to be set up at all “government centres” (but actually available only in some of them, such as, for example, Elliniko in Athens and inland at Katsicas), with an important supporting role played by UNHCR and EASO. As for the timing to carry out such procedure, that can also be called a sort of census of the migrants currently on the Greek mainland.

\(^70\) According to the data published by UNHCR July 13th, 2016 8,475 migrants should be currently on the islands and 42,065 on the mainland.
\(^72\) Six months for Syrians, 30 days for people belonging to given different nationalities.
territory, in a note dated July 1st, UNHCR stated that, up to that date, over 15,500 people had been pre-registered, with an average of 700 people per day going through the procedure\(^7\). During the observation period, and in particular visiting Eleonas and Elliniko camps in Athens, we detected that those living in government camps went through the **pre-registration** procedure at quite high rates and that it was UNHCR officials who arranged coaches to transfer asylum seekers from the camp to the “hub” for **pre-registration**.

In more practical terms, we can say that **pre-registration** does not represent a true formalization of asylum applications, but rather a way to record the will to ask for their acknowledgement, as it does not even involve the **official process of photo-identification and fingerprinting**. After the pre-registration, the applicants receive a one-year residence permit with their personal data and photo, that enables them theoretically to access basic services (e.g. healthcare), but not the labour market.

Based on an information note\(^7\) published by the Greek Government together with Asylum Service, UNHCR and EASO, pre-registration is only a “first step” in the procedure to obtain international protection (like for relocation or reunion), that is necessary in order to get a later appointment with the Asylum Service (notified via SMS) and avoid the risk of repatriation.

As hinted by the *Central Asylum Service’s* spokesperson interviewed, the duration of the residence permit - a year - is indicative of the timing envisaged by the Government to proceed to the second phase of the asylum process, i.e. the **registration**.

On the other hand, the timing to outline the **relocation** procedure would appear to be shorter. The topic will be dealt with in greater detail later. However, we would like to highlight that, apparently, the **relocation** procedure is given priority over the other two, at least formally.

**Is there a division based on nationality?**

As for the possibility to access the procedure to obtain international protection, it does not seem to be any effective nationality-based discrimination in the practices applied by the administrative authorities in charge. Indeed, based on the information obtained, the pre-registration process involves all applicants currently in the so-called government centres, regardless of their country of origin. The fate of those living in informal camps, where UNHCR and the government did not implement this procedure yet, is more uncertain. That is the case of the port of Piraeus, home to around 1,500 people in mid-June. The situation of the migrants living in occupied buildings, shantytowns and camps in larger cities, and who, for example, were at one time able to register their asylum applications through Skype, with the mediation of guarantee institutions or NGOs, is still different.

In practice, however, the real possibility to access the procedure is counteracted by extremely long waiting times between the pre-registration and registration phases (the latter being when the asylum application is actually formalised), which are presently not entirely predictable, but are probably longer than a year.

Applicants living in government camps are given priority for the pre-registration phase, while asylum seekers who decide to live outside those camps (therefore in informal camps, occupied buildings, apartments) are registered only later, which according to a number of lawyers interviewed over the course of our research is a form of pressure exerted by the government to prevent migrants from straying from the camps or leaving them altogether, despite the poor living conditions experienced by those housed there.


**Who carries out the vulnerability screening assessment?**

According to the spokesman from the Greek NGO Praksis, UNHCR has a role - at least in the government camps - in monitoring the progress of the procedure to obtain international protection, and in reporting cases of vulnerability. This latter task, however, is also carried out by non-governmental organisations. Praksis, for example, draws up regularly a list of people, housed in the centres where the organisation operates (for example Diavata, near Thessaloniki) and who are considered as vulnerable. The list is delivered directly to the Asylum Service, which in theory, after a further process of selection, facilitates and speeds up the entire application procedure for those included the list.

Similar measures are in place in Athens at the multi-service centre run by the NGO Solidarity Now. The centre is home to many offices of other NGOs providing multi-level assistance to migrants and vulnerable people, as well as to the office of the Asylum Service itself, which collects the applications for international protection from those receiving assistance in the centre, who are then photo-identified and registered.

As regards the role of UNHCR in this area, a UNHCR official interviewed in Athens declared that the United Nations agency does not currently have a mandate relating to the various activities to be carried out in Greece, resulting in services being disparate and not uniformly distributed throughout the country.

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76 [http://www.solidaritynow.org/](http://www.solidaritynow.org/); Solidarity Now is a Greece-based NGO, set up in 2013 thanks to funding from the Open Society Foundation with the aim of “mitigating the damage engendered by the humanitarian crisis that Greece is currently enduring”. The NGO’s web page states that its mission is to “counter the most serious effects and urgent needs promulgated by the crisis, through the provision of relief services to members of the society most affected; as such SolidarityNow (in cooperation with the OSF) has opened two solidarity centres, one in Thessaloniki and one in Athens, inspired by founder George Soros’ original idea of solidarity houses or safehouses for those seeking refuge”. These “solidarity centres” also provide office space for other NGOs, aiming at meeting the different needs of those at risk, providing them with all necessary services under one roof (e.g. psychological support, social and medical assistance, mediation with the different institutions and easier access to the available procedures, including those related to international protection etc.).
II. THE REQUEST AND EXAMINATION PROCEDURE FOR INTERNATIONAL PROTECTION APPLICATIONS

On the islands. Lesvos and Chios

What is the procedure to apply for international protection?

After expressing the will to apply for international protection in Chios and Lesvos, asylum seekers are issued with a form with their personal details and a declaration of their will to apply for protection. Nevertheless, there is no procedure in place to examine these applications upon the merits. Only Syrian citizens’ applications are processed, that, nevertheless, must first meet the admissibility requirements, according to the Greek law on asylum, art. 54, and art. 33 of the Procedures Directive no. 2013/32/EU, before being examined upon the merits.

What is the procedure to determine the admissibility / inadmissibility of international protection applications?

Following registration, Syrian asylum seekers are slowly called for interview. The Asylum Service issues then a decision as to the admissibility or inadmissibility of the application for international protection. The methods used to call applicants for interview varies depending on the centre: the Vial registration centre, for example, posts up lists of applicants to be interviewed every day. The interview is carried out entirely and solely by EASO’s officials supported by an interpreter and may last several hours. The interpreters are not normally from the asylum seekers’ homeland, but European citizens speaking the applicants’ language. During the interview, Syrian applicants are asked to give a brief account of the persecution suffered in their homeland, with special focus on possible persecutions experienced in Turkey that could endanger the applicants’ safety if re-admitted there. They are always asked if they have relatives in other EU member countries. This is another chance for officials to detect possible applicants’ vulnerabilities.

Who has the final say?

The final decision lies with the Asylum Service and is also based on the assessment made by EASO following the interview. Therefore, the Asylum Service notify the decision of admissibility or inadmissibility of the asylum claim. The Syrian asylum seekers, whose applications are deemed admissible are issued with a travel document, allowing them to leave the island and complete the procedure to apply for international protection in Athens.

What are the criteria for determining admissibility / inadmissibility?

Based on art. 54 of the Greek law on asylum, an application for international protection is considered inadmissible when lodged by a foreign citizen, who could have found protection in a different country that can be regarded as a first country of asylum, according to art. 56 of the same law, and art. 35 of the Asylum Procedures Directive.
Based on our observations, the interview carried out by EASO aims to identifying applications that cannot be acknowledged as inadmissible, in particular if lodged by Syrian asylum seekers coming from Turkey, which cannot be considered a country of first asylum, if they run the risk of being persecuted or suffer inhuman or degrading treatments. Moreover, applications lodged by vulnerable
asylum seekers or applicants having relatives in a different EU, who can then apply for family reunification in compliance with the Dublin Regulation, are processed in a different way.

How the inadmissibility measure can be appealed?

The inadmissibility measure can be contested before the Appeal Committee, located in Athens. According to art. 61, the applicant can appeal against the decision within 5 days, also unsupported by a lawyer.

The inadmissibility measure is automatically suspended, until the competent Appeal Committee takes a decision.

At the time of our investigation, only 2 out of the 70 appeals lodged with the Appeal Committee against the measure of inadmissibility had not been granted. In Chios the measures of inadmissibility for applications for international protection had not been served on the applicants yet. However, 14 measures were ready to be served on the applicants over the following days.

During our visit, the Greek law was emended to change the composition of the appeals body. More precisely, art. 86 of law no. 4399/2016, published June 22nd, states that the Appeal Committee shall consist of two judges from the Administrative Courts specialising in asylum law, and one member appointed by the Ministry of the Interior and chosen from a list drawn up by UNHCR, based on their training in this area. Prior to this modification, in addition to the member chosen from UNHCR’s list, the other two members were from the public administration sector, and were appointed by the National Commission for Human Rights.

Up to now, the inadmissibility procedure did not yield the results hoped for by the Greek government and the EU. The measures of inadmissibility with regard to the applications for international protection, which should have led to the re-admission of foreign asylum seekers to Turkey, have been overturned by the appeals body almost in their entirety. That definitely paralysed the readmissions to Turkey based on the inadmissibility of the applications for international protection. On the state of implementation of the EU-Turkey agreement, see the two European Commission documents of April 20th and June 15th, respectively. Moreover, the only two inadmissibility measures confirmed by the Committee had been appealed in due time before the administrative judicial authority.

How can the Appeals Committee’s measure, that rebuts the appeal opposing the inadmissibility decision, be impugned?

An appeal can be filed to the administrative judicial authority, consisting of two sets of proceedings. For those phases the technical assistance of a lawyer is always required.

In the identification and registration centres, several NGOs offer legal assistance and provide actually the only legal protection. Asylum seekers can hardly turn to external lawyers, above all in Lesvos, as the centre in Moria is closed to the outside. Also in Chios finding legal assistance is particularly difficult, because only four lawyers on the island are specialized in this kind of lawsuits.

In case of the appeal before the court, the provision is not automatically suspended. The interim

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77 For a comment on one of these decisions, please see below https://pushandback.com/esperimento-grecia. June this year, the European Commission reported that only two out of the 70 inadmissibility measures initially issued by the competent authorities were successively confirmed by the Appeal Committee (p.4 http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160615/2nd_commission_report_on_progress_made_in_the_implementation_of_the_eu-turkey_agreement_en.pdf). The same document also reports that out of a total of 1,429 asylum applications lodged until 2016.06.15 in the islands, 267 had been declared inadmissible, 252 of which were brought before the Appeal Committee.

applications and any ante causam (pre-trial) interim injunctions shall be subject to independent applications, therefore the competent judicial authority decides on a case-by-case basis, whether to suspend the measure or not.

**What happens when an application for International protection is acknowledged as admissible?**

All applicants, who formalized the application, and Syrian citizens whose application has been acknowledged as admissible, obtain the so called white card (international applicant card - enclosed) with photo, identification data and date of the appointment with the Asylum Service in Athens. The applicant shall then go to the Asylum Service’s offices in Athens on the fixed date, to be interviewed. The fares for the transfer from the island of Lesvos to Athens and the possible accommodation shall be borne by the applicant and no economic support is granted by the government.

**On the land. Thessaloniki, Athens and surroundings**

**Procedure to obtain international protection. On the land.**

1. **Pre-registration** (acquisition of personal data, without photographic identification. A one-year residence permit is issued, that guarantees access to basic services like healthcare, but no access to the labour market).
2. **Registration** (application formalization, photographic identification and brief interview about the reasons for fleeing one’s homeland).
3. Personal hearing (it concerns the application foundation, currently taken care of by the Asylum Service at its territorial offices).
4. Appeal before the Appeal Committee (administrative authority), within 30 days from the notification of the rejection (15 days in case of expedited procedures).
5. Jurisdictional appeal (to the territorially competent administrative court), within 60 days from the notification of the rejection.

**How does the asylum application get formalized? The registration.**

If the applicant has completed the Skype procedure successfully (that continues to be rarely working and is quite challenging, as already highlighted79), he/she is invited to go to the territory competent Asylum Office to formalize the asylum application, or, if possible, to apply for reunification or relocation80. The same should happen for applicants, who have already accomplished the pre-registration procedure, even though, as already mentioned, the time between pre-registration and registration – especially for those, who did not apply for relocation – could be very long. During the registration, accomplished physically by the Asylum Service’s authorities, the asylum seeker gets photographically identified and undergoes an interview lasting on average one hour and concerning personal particulars, reasons for fleeing the homeland, details about the journey to Europe and reasons

79 As for this, please refer to the report published by A.S.G.I. April 13th, 2016 and produced on the occasion of the campaign Overthefortress “Idomeni. Un’analisi giuridica sui diritti negati ai migranti” (Idomeni. A legal analysis on the rights denied to migrants), available at the page http://www.asgi.it/notizia/idomeni-analisi-giuridica-grecia.

80 The information, according to which those who arrived in Greece after March 20th (and who are on the land, as their application has been acknowledged as admissible) have no longer access to the relocation programme, is being verified.
for fearing a possible return. At the end of the registration procedure, a residency permit is issued, that enables the applicant to access the public services and the labour market. A later appointment is then made, again at the Asylum Service’s office, for a personal hearing, to assess the asylum application upon the merits. According to the Asylum Office in Athens, this happens in a period between 2 and 3 months after the registration, and anyway not exceeding 6 months.

**The hearing and the first instance decision.**

The asylum seekers’ hearing, governed by para. 52 of the law on asylum, occurs before an Asylum Service’s member supported by an interpreter and its duration vary. Before reforming the asylum right in Greece in 2013, that first phase, both the registration and hearing, was accomplished by police officers, while today such activities are fully carried out by the Asylum Service.

The interview concerns the reasons that forced the applicant to flee his/her homeland or country of usual residence (in case of stateless applicants), the reason for fearing a possible return and, in general, the personal history and the journey undertaken. The applicant shall also be able to confirm what already stated at the time of registration.

The interviewed Asylum Service’s officer complained about such administration being understaffed and therefore unable to get quickly through the workload. The increase in the interventions of the European agencies, supporting the Greek authorities in the asylum procedure, was therefore regarded as positive, with particular reference to EASO that right at that time was hiring many officers to be deployed in Greece.

The decision upon the merits for the application is made in first instance by the Asylum Service’s member, who took care of the interview and such decision may be challenged before the Appeals Committee.

**What happens when an application is rejected upon the merits?**

As already mentioned, the Appeals Authority (para. 61), which is an administrative body, is the competent authority receiving the appeals against rejections in first instance of applications for international protection. The single appeals are examined by the Appeal Committees, whose composition has been recently changed, as highlighted above.

It is important to underline that the authorities currently receiving the appeals are the so called Backlog Committees81, established to get through a backlog of work starting already from the reform in 2013, but that actually carry out also the standing committees’ tasks, that, according to the information gathered during the visit at the Central Asylum Service, would not be operative at the moment, due to the lack of financial resources. That issue was highlighted by the Asylum Service’s officer interviewed during the survey, who strongly emphasized that, despite the recent staff recruitments, also the Appeal Committees are understaffed.

When the measure of first instance is appealed, its effects are automatically suspended and the time to file the appeal varies, depending on the procedure to be followed for each specific case (30, 15 or 5 days). For this reason, the applicants, who filed an appeal against the rejection of the application for international protection, shall be granted the related residence permit. As already referred in the case of inadmissibility, during such phase the claimant is under no obligation to be represented by a lawyer.

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Finally, it shall be underlined that the appeal procedure does not include a requirement for the Commission to hear all claimants again, as the procedure is based primarily on the analysis of the documents submitted. Specifically, before the emendation dated June 2016, claimants had the right to request to be heard again, while currently such decision is independent and up to the Commission itself.

Relocation and reunification.

As already anticipated, at the time of the pre-registration or registration, the migrants having the requirements to start the procedure of reunification with the family members on the European Union territory (according to the Dublin Regulation), or the so called relocation, may apply for it. As for the first procedure, it will very likely take an extremely long time, as no priority is granted compared to the other two procedures. That is confirmed by the information gathered while interviewing the asylum seekers, also of Syrian nationality, who, despite the possibility to apply for the reunification with the family members in Europe, preferred to opt for relocation, frightened by the extremely long time envisaged for the reunification procedure.

As a matter of fact, we ascertained that no preferred procedure had been adopted for two Afghani minors in the camp of Eleonas (Athens), who would have the possibility to reunify with the brother, beneficiary of international protection in Italy. On the contrary, they were housed in a reception centre on the outskirts of Athens, where allegedly more than 2,000 adults and juveniles migrants are housed together, and carried out the pre-registration procedure only in mid June, without having the possibility to suitably explain their legal position. Also in their case, the permit issued after the pre-registration had a duration of one year, therefore it would seem reasonable to assume that several months might be necessary to start the reunification procedure.

As for relocation, it is appropriate to briefly outline the procedure, in order to fully understand its critical issues and at the same time the central role it plays in managing the mobility of asylum seekers, mainly Syrians, in Greece and then in Europe.

As known, the so called relocation consists in a procedure that enables asylum seekers of certain nationalities “in clear need of international protection” to request to be legally transferred in a different European country, which becomes responsible for his/her asylum application. The asylum applications re-distribution criteria, in the intentions of the European Council, should reflect the specific situation of each Member State.

The procedure is currently applied in Greece and Italy, based on the decisions of the European Council. In Greece only asylum seekers arrived after September 16th, 2015 may access the relocation procedure, up to a maximum of 66,400 applicants over two years. Nevertheless, according to the data provided by the EU Commission, until June 15th only 1,503 asylum seekers completed such

82 I.e. asylum seekers, belonging to nationalities with an acknowledgment rate for international protection in first instance over 75%, according to Eurostat statistics.


procedure, due to the several obstacles encountered in the actual application of the decisions on relocation. Among those, the reluctant attitude of many Member States to guarantee real access to the asylum seekers included in the relocation procedure together with the selection carried out by the few Member States, which were willing to apply the re-distribution system of the asylum seekers on the European territory.

The procedure to transfer asylum seekers who are in Greece and Italy, and are to be “relocated”, is described in art. 5 of the EU Council decision 1601/15, previously mentioned. This provision sets out the obligations for the member states of final destination, including, for example, the obligation to periodically communicate the number of asylum seekers they are able to receive. Italy and Greece, on the other hand, shall identify those applicants. The comma 7 of the same art. 5, on the other hand, includes the possibility of excluding the relocation for an asylum seekers, when allegedly dangerous for national security and public order. This tool turned out to be an extremely important exception available for Member States.

In fact, based on our observations, the ones eligible for relocation in Greece are asked to specify 8 different Member States, in order of preference, where they would like to be transferred. However, this list is not binding and the Greek authorities have the power to transfer the asylum seekers to any country that has expressed the willingness to receive asylum seekers. Once asylum seekers have been assigned to one of the available Member States – based both on the criteria of the destination country and the personal characteristics of the asylum seekers – they are informed of the decision, and if they refuse the transfer, they will be excluded from the entire relocation procedure (art. 5 comma 9).

The asylum seekers admitted to the procedure are then interviewed by EASO officials at the pertaining local Asylum Service offices. Also in that case, the European agencies, primarily EASO, are major players, as provided for by the Council decision 1601/2015, art. 7.

If the decision is accepted, the destination countries will verify whether or not the asylum seeker poses a risk to the national security and public order. Each country uses different methods to carry out this check. Different sources reported that in France (and possibly also in Holland) asylum seekers requesting relocation undergo extremely long interviews, lasting up to 6 hours. The questions vary greatly, but according to the reports gathered, questioning may in some cases address intimate aspects of the applicants’ private lives and personal relationships. In the case of France, the interviews take place at the offices of the consular authorities and at the embassy. If the applicant is considered dangerous for the national security and the public order of the country he/she has to be relocated, the relocation procedure is terminated, and the asylum seekers goes forward with the procedure to obtain international protection in Greece.

The methods and terms to appeal the decision to relocate asylum seekers to a country other than those requested, or the refusal of applications or requests for transfer, have not been clarified yet. The competent authority in charge of evaluating such matters would seem to be the Appeals Authority, similarly to what happens in the case of rejection of asylum applications or inadmissibility measures. Understanding the real possibilities for asylum seekers of nationalities selected for relocation, and the real timing for the completion of that procedure, is of great importance, given the emphasis placed on those items by the Greek authorities and the European agencies in dealing with the asylum seekers in Greece.

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86 Art. 5 comma. 7 of EU Council decision 1601/15: “Member States retain 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 Directive 2011/95/EU”.

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From the interviews carried out, it emerged that the relocation process is considered a key step to bring Greece out of its current crisis situation and bridge the delay in applying the procedures to obtain international protection. Furthermore, it is perceived as a rapid and effective solution for those asylum seekers, who have the requirements to apply for it (as well as an unjustified discrimination factor against those who cannot access this option).

**However, the importance attached to the relocation procedure, and the high hopes engendered as for the perspectives for the continuation of the migration path, are in sharp contrast with the official communications of the same European institutions,** which clearly show the slowness and inefficiency of the asylum applications distribution mechanism. Those include the opinion of the European Commission, expressed in the fourth report on relocation and resettlement published 2016.06.15 (COM (2016) 416)\(^{87}\), and clearly stating that the relocation procedure - both in Greece and in Italy - led to the transfer of only 2% of the total number of migrants it could have potentially involved, due to the strong unwillingness by the destination countries to actually apply the procedure\(^{88}\).

It might seem that the hope to be transferred thank to relocation strengthens the idea that all procedures are being carried out swiftly, but actually very few people are managing to access the procedure and get a positive outcome.

**III. THE RECEPTION AND THE IMMIGRATION DETENTION**

**On the islands. Lesvos and Chios. The identification and registration centres, and detention for identification purposes. The reception centres and the relationship with guarantee institutions and NGOs**

On the islands, we have observed both detention centres for asylum seekers and “economic migrants” and open reception centres.

The legal framework governing the detention centres is found in articles 9 (initial reception and identification procedures), 14 (on the registration and identification procedures) and 46 (relative to the treatment of asylum seekers in the event of an application which was formalized while in detention for deportation) of the Greek asylum law (law n. 4375/2016). Regarding the reception centres, which we will call government centres to distinguish them from those run by the NGOs, reference should be made to art. 15 of the same law.

The first type of centre we observed was the identification and registration one (the so-called hotspots), which the Greek law (art. 9) calls Reception and Identification Centres (hereinafter RIC) that have the task of registering, identifying, and then sending the asylum seekers to other centres throughout the country. These centres, therefore, are mainly located on the islands.

In general, the asylum seekers begin the procedure for the recognition of international protection in a state of freedom, but art. 14 of the Greek asylum law allows the director of each centre, nominated

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88 [COM (2016)416, p. 3: “Member States are far from complying with their allocations under the Council Decisions. As we approach the half-way point of the duration of the Council Decisions, the rate of implementation of relocation stands at a mere 2%. Five Member States (Austria, Croatia, Hungary, Poland and Slovakia) have not relocated a single applicant; seven (Belgium, Bulgaria, Czech Republic, Germany, Lithuania, Romania and Spain) have relocated only 1% of their allocation; and only four Member States (Finland, Luxembourg, Malta and Portugal) have relocated more than 10% of their allocation”](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160615/4th_report_on_relocation_and_resettlement_en.pdf)
by the Ministry of the Interior, to hold asylum seekers for a maximum of three days from their arrival. The director may then issue a written “restriction of personal freedom” order[^89], to allow for the completion of the registration, identification, and screening procedures. The period of “restriction of personal freedom” in the RIC may not exceed a period of 25 days, after which the asylum seeker must be transferred to one of the open centre, particularly those persons considered to be vulnerable[^90]. Appeals can be lodged against the order at the Administrative Tribunal competent for that area.

Although unaccompanied minors are exempt from administrative detention by law, this requirement is often ignored by the authorities.

The authorities responsible for the centres describe the “restriction of personal freedom” applied to minors as a form of “protective custody” necessary for their own safety. Sometimes, as in the Vial centre, minors are put into this “protective custody” together with a large number of adults. In the Moria centre, on the other hand, unaccompanied minors, held into the centre and forbidden from leaving, are placed in an area separated from that of the adults by barbed wire.

Although the Vial centre in Chios and the Moria centre in Lesvos both fall under the category of RIC, there are significant differences between the two in terms of management. Indeed, Vial is a closed centre where arriving migrants should be held for a maximum of 25 days, for identification purposes and in order to (eventually) apply for asylum (or for repatriation, in the case of “economic migrants”). In practice however, Vial is an open centre, where the migrants “detained” are able to leave during the day. According to the information we gathered, this is because keeping order during the time Vial was operating as a closed centre had become excessively complex, due to the numerous protests staged by the migrants, beginning as far back as the end of March.

There is therefore a discrepancy between the juridical status (as persons held) of the migrants “host” at Vial, and their actual condition as persons who can leave the centre, as long as they stay on the island. This situation is formally reflected in the fact that the migrants “detained” in that centre are issued with an order whereby they are detained for a maximum of 25 days, after which – sometimes – a second order is issued which formally declares the termination of this order.

Moria, on the other hand, is to all effects a closed centre, where the migrants arriving in Lesvos seeking asylum (the vast majority) are held in conformity with art. 14 of the previously mentioned Greek asylum law. Different sources have informed us that in practice, the period of 25 days, after which the detention of asylum seekers becomes unlawful, is often exceeded, and even appealing against the order is almost impossible for practical reasons, particularly the difficulty of obtaining a lawyer. The only lawyers who, with difficulty, manage to gain access to the centre in Moria, are mainly those working with the NGOs, with private and limited funds and resources. The small number of lawyers with access to the registration centres hinders asylum seekers from exercising their right to a defence which, as it is reasonable to assume, cannot be guaranteed to all migrants held in administrative detention. Our investigations have also revealed a number of practices by the public safety authorities and European agency officials (EASO in particular) which further undermine the right to a defence. In Moria, for example, lawyers are permitted access to the centre only if they are

[^89]: This restriction forbids asylum seekers from leaving the RIC, and obliges them to remain within its boundaries. The persons “resident” in the RIC must be informed of the content of these measures in a language they understand, and permission to leave the centre to receive medical assistance may be granted in exceptional circumstances.

[^90]: Art. 14 paragraph 2: “Third-country nationals or stateless persons entering the Reception and Identification Centre, are subject to the procedures set out in Article 9; they shall be placed under a status of restriction of liberty by decision of the Manager of the Centre, to be issued within three (3) days of their arrival. If, upon expiry of the three days, the above procedures have not been completed, the Manager of the Centre may, without prejudice to article 46 below which shall apply accordingly, decide to extend the restriction of the freedom of the abovementioned persons until the completion of these procedures and for a period not exceeding twenty-five (25) days from their entry into the Centre”.

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already in possession of names and details of the persons they are to assist, and their presence during the interviews conducted by EASO to evaluate the admissibility of asylum applications, would seem to be possible only if they are nominated by power of attorney authenticated by a police official. Although, by law, detention should only be used in exceptional cases, it was seen to be applied generally and systematically against migrants and asylum seekers, apparently with no assessment of individual circumstances and, above all, without the measures being translated into a language known by the interested parties. Looking ahead, it appears that this practice of systematically applying the measure restricting the personal freedom of migrants arriving on the islands is not likely to be stopped. On the contrary, during the interviews conducted with institutional players, it emerged that the existing detention facilities are being enlarged and renovated, in anticipation of heavier usage, including for deterrence purposes.

Interviewed associations and lawyers reported - and this is confirmed by the print media\(^\text{91}\) - that EASO has recruited staff from one of the leading “security companies” in the world, G4S. EASO apparently took this initiative to ensure security inside and outside the Moria and Vial hotspots. The reasons put forward by EASO to justify this heavy use of private security mainly concern guaranteeing the smooth handling of procedures for the recognition of international protection, as well as ensuring the safety of EASO officers who, after numerous riots at the hotspots, had sometimes to leave and stop their activities. Along with this situation, however, a strong tightening of (unwritten) rules was observed, with regard to access to the centre of Moria, again for security issues, resulting in a negative impact on the work of the lawyers. Indeed, through the Lawyers’ Association of Mytilene (Lesvos), they have reported the conduct of EASO and G4S as infringing the right to a defence of detained asylum seekers\(^\text{92}\). In terms of specific legislation, the first paragraph of Article 16 of the Asylum Law allows the Ministry of Interior to use private forms of police, but only for security issues in open facilities, meanwhile nothing is specified for RICs.

**In conclusion,** it is important to point out the marked change in the open or closed nature of these facilities that has taken place after 20 March 2016. Before that date, migrants landing on the islands were taken to the so-called hotspots to register (identity, photographs and inclusion in the Eurodac database) and were then free - upon completion of the registration process - to leave the island, mainly via direct ferries to Athens. The Moria centre had therefore the dual task of identifying and registering, as well as providing shelter for arriving migrants. There was strong nationality-based discrimination between migrants and not all were actually registered. Pakistani and North Africans in particular, were often not registered and therefore unable to leave the island, because they were unable to go through port controls, where only registered foreigners are allowed through.

Open reception centres were also seen on the islands. Article 15 cited above very briefly defines two fundamental issues relating to open reception facilities for asylum seekers: their management and their legal status. This very brief norm only states that the director of the facilities must coordinate and manage all staff employed within them and can cooperate with “other authorities and organisations”, in accordance with the rules of each facility. Secondly, it states that migrants taken into these facilities are allowed to come and go freely, again in accordance with the internal rules of the facility.

In addition to these generic rules, it is to be noted that there is a lack of more detailed legislation

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\(^{91}\) [https://www.newsdeeply.com/refugees/op-eds/2016/06/15/new-security-on-greek-islands-reduces-access](https://www.newsdeeply.com/refugees/op-eds/2016/06/15/new-security-on-greek-islands-reduces-access)

regarding the reception of asylum seekers, in stark contrast with the provisions set out in Directive 2013/33/EU.

The Dipethe centre on the island of Chios falls into the open centre category referred to in Article 15. In practice, this centre appears to be run by the island’s local administration - making up for the ministry’s shortcomings - and a few voluntary associations. The camp consists of tents housing around 300 people and was ready even before 20th March to make up for the lack of places at the Vial centre which, at the time, was not used for detention purposes.

Another “open” camp, Souda, is also found on the island of Chios, located at the foot of Chios castle. This camp consists of tents and a number of containers. It was set up to make up for the lack of space inside the island’s hotspot. Here too, the shortcomings in the government’s management are partly offset by the activities of the local authorities.

On Lesvos, on the other hand, the formal and informal reception system is more varied.

The camps examined on this island are KaraTepe, Mantamados and Pikpa. The latter is run by volunteers and activists with donations from NGOs and private individuals and mainly receives families and vulnerable subjects, regardless of their legal status.

The first camp, KaraTepe, consists mainly of containers and tents and is not far from the Moria camp. What is immediately noticeable is the very strong involvement of NGOs, European agencies (particularly EASO) and guarantee institutions (such as UNHCR) in the running of the centre itself.

The particular feature of Mantamados, on the other hand, is that it is run completely and directly by Médecins Sans Frontières and the Greek NGO Praksis. Established initially as a transit centre for all migrants arriving on the island, the Mantamados centre later became a reception centre for unaccompanied foreign minors who, due to insufficient space, cannot be taken in at Moria. The camp is in a very isolated location and the reception facilities consist solely of tents and containers.

It should be noted that minors who are not accepted at this camp, whose facilities are unsuitable for minors, remain within the Moria detention centre, under informal “protective custody”.

On the mainland

The centres inspected on the mainland were primarily open centres due to the impossibility of obtaining the authorized access to the detention centres, in spite of requests lodged.

Specifically, access was requested to the centres of Amygdaleza (Athens), Paranesti (Thessaloniki), Xanthi (on the border with Turkey) and Orestiada (Evros).

These centres, referred to as “pre-removal camps”, detain both foreigners awaiting deportation and asylum seekers being detained in accordance with Article 46 of the Greek law on asylum.

This law states that, under certain circumstances, it is possible to detain asylum seekers who have submitted their applications for international protection while they are already detained, not as a

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93 Art. 46 par. 2: “a. in order to determine his /her identity or nationality, or b. 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, as defined in article 18 point (f) of Law 3907/2011, or c. when it is ascertained on the basis of objective criteria, including that he/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; d. when he/she constitutes a danger for national security or public order, according to the reasoned judgment of the competent authority of point 3 of this Article, or e. when there is a serious risk of absconding of the applicant, pursuant to Article 2 point (n) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 according to the criteria of Article 18 point (f) of law 3907/2011 which apply respectively and in order to ensure the enforcement of a transfer decision according to the above Regulation”.

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punishment, but as an administrative measure in order to remove them from the national territory. In accordance with Article 46 (which transposes into national law the provisions of Articles 8 and 11 of Directive 2013/33/EU), the detentions order is issued by the detention centre director and the measure can have a maximum duration of 18 months. The decision ordering the detention can be challenged before the Administrative Court.

Although the public security authorities that manage these centres told in informal interviews that asylum seekers are not detained in these places, especially those from Iraq and Syria, the opposite has been verified through contacts with some of the lawyers defending people detained in the various camps who happen to belong to those nationalities.

According to information held by Asylum Service of Athens, detention is used particularly frequently with foreigners, who have no residence permit, after completing a prison sentence. Therefore, part of the detained population is composed of people who have previously been held in Greek prisons. In particular, according to information gathered during the interview with the Athens Asylum Service, it would seem that the Orestiada centre is mainly used to detain, pending their deportation, migrants caught illegally crossing the nearby border between Greece and Turkey.

The systematic use of detention of unaccompanied minors must be especially highlighted and has been strongly denounced by NGOs such as Praksis and Save the Children and it is always referred to as “protective custody”.

Regarding reception measures, a variety of situations were observed and, in order to provide an accurate account, we will also mention forms of informal “reception” and of migrant self-organisation in large cities. There are many informal camps (currently the best known is at the port of Piraeus) and in large cities, especially Athens, many disused or abandoned buildings are being used for residential purposes, some of which were visited during this research. The facilities used to house migrants held up in Greece since the closure of the borders along the Balkan route vary considerably, especially since the Idomeni camp was cleared in May 2016. It is estimated that there are now between 50,000 and 60,000 migrants on the Greek mainland; these are mostly Syrian citizens, who, for the most part, arrived before 20th March.

The pre-registration procedure is helping to establish the number and origin of these migrants, although, so far, it is only being carried out on the people living in the government camps. A limited number of asylum seekers continues to access the procedures through Skype.

Some general comments can be made on the basis of our observations and interviews.

The facilities used for reception purposes are highly diverse: former airports (Elliniko camp in Athens, Katsikas, along the border with Albania), barracks, former clinics (Piera, in the inland), stadiums (Elliniko, Athens, hockey stadium and baseball stadium), hotels, schools (Doliana, on the border with Albania). Reception is often organised through the use of tents (Drama, Thessaloniki) and cargo containers (Eleonas, Athens). As reported by NGOs and activists, reception conditions, even as far as to meeting the most basic needs, are entirely inadequate94.

Information concerning access to the procedure for the recognition of international protection and access to services is patchy and generally not guaranteed. From this point of view, it should be noted that attempts to meet this obligation, which now seems to lie with the state authorities alone, mainly come from the NGOs, and in part from UNHCR.

For example, the NGO Praksis reports on its activities in some camps, including Diavata (Thessaloniki), in cooperation with UNHCR, which involve providing legal information on one side and reporting

the most vulnerable cases to the Asylum Service on the other. More specifically, Praksis provides some lawyers who pay weekly visits to the Diavata. Their activity mainly consists of distributing information brochures on relocation to Syrian citizens; the information provided refers to the general procedures rather than specific cases. This NGO, again in cooperation with UNHCR, also seems to report the most vulnerable cases, with the aim of speeding their access to the procedure for the recognition of international protection and to relocation. Praksis also has a number of apartments (2500 throughout Greece) available for the families considered most at risk.

With regard to **management**, the government camps are normally run by the police forces, employed by the Ministry of the Interior or the Ministry for Migration, or directly by the army (e.g. Konitsa and Doliana, near the border with Albania), but in some cases, such as in the Lagkadikia camp (Thessaloniki), humanitarian organisations are heavily involved in management, especially the UNHCR.

In **non-official camps**, such as the one in the port of Piraeus (which is in fact in the process of being cleared out), the only assistance being provided as far as distribution of food, medical assistance and, in part, legal counsel, is being carried out by NGOs (e.g. Solidarity Now) and the Red Cross.

Finally, in Athens alone there are currently six large-scale residential illegal **occupations**. The most famous is that of the City Plaza Hotel, which has been hosting around 400 migrants since 22\textsuperscript{nd} April 2016 and which was visited during this investigation\textsuperscript{95}. In these situations, the migrants, alongside groups of Greek activists, independently organise their time and manage their communal living, even succeeding in implementing collective strategies which enable them to access the procedures more easily. For example, at the time of the Skype procedure, in some of these occupied buildings, thanks to the previous experiences of other asylum seeker, it had been developed strategies to successfully connect with the services of the Asylum Service and request an appointment.

Iraqi refugees in their room at the occupied City Plaza Hotel in Athens, June 2106
Refugees of various nationalities in the occupied City Plaza Hotel in Athens, June 2016
Refugees of various nationalities in the occupied City Plaza Hotel in Athens, June 2106
CHAPTER 2
Violations of European Asylum law and international law and some possible available remedies

I. VIOLATIONS OF THE ASYLUM PROCEDURES DIRECTIVE 2013/32/EU

Delays in the examination of the international protection applications

As discussed, migrants arriving on the Greek coasts after 20th March, as well as those who have already reached the mainland, have the option of declaring their wish to request international protection. However, for all non-Syrian asylum seekers, there is a very long waiting time before their application can be examined. This situation is common to most migrants within Greek territory: although under national and international law they cannot be expelled because they are recognised as asylum seekers, they have neither formalised their application for international protection nor will their application be examined within a reasonable timescale. They thus find themselves in a dangerously uncertain situation: the laws which apply to them are constantly changing, as are the procedures for examining the merit or the admissibility of their application for international protection. It is difficult to estimate not only the time necessary for their applications to be examined, but also what procedure will be applicable to them. In the same way, declaration of their wish to claim asylum does not guarantee access to work, leaving large numbers of migrants and their families destitute, especially given the fact that the Greek State is currently unable to guarantee adequate standards of hospitality from all points of view: medical, scholastic, reception and nutrition.

Article 31 of the Directive states, in fact: “Member States shall ensure that the examination procedure is concluded as soon as possible, while providing for adequate and complete examination”. In this respect, it is important to stress that yet again, the pre-registration procedure (whether on the islands or mainland) cannot be considered sufficient measure to guarantee that the international protection recognition procedure be effectively carried out. This is because on one hand, pre-registration does not automatically enable access to various rights, above all the right to work, and on the other hand, it is not valid as a formal application for asylum, but simply one of the ways in which the wish of foreigners to seek asylum in Greece is expressed and collected.

The right to legal information

Since the very first stages of the procedure legal information provided by the administrative authorities is totally non existent. This violation is even more blatant and concerning since non-Syrian migrants will have to wait, sometime while still under detention, for many months without any information at all regarding the reasons for the delay or on how to move forward with the procedure. According to article 12 of the Directive “they shall be informed in a language which they understand or are reasonably supposed to understand of the procedure to be followed and of their rights and obligations during the procedure and the possible consequences of not complying with their obligations and not cooperating with the authorities. […] That information shall be given in time to enable them to exercise the rights guaranteed in this Directive and to comply with the obligations
described in Article 13”.

Furthermore, article 19 (Provision of legal and procedural information free of charge in procedures at first instance) states that “In first instance procedures, Member States shall ensure that, on request, applicants be provided, free of charge, with legal and procedural information including, at least, information on the procedure in the light of the applicant’s particular circumstances”. Furthermore, pursuant to article 21, Member States are permitted to delegate the provision of legal information to NGOs, professionals from government authorities or specialised services by the State.

Although until 2015 this task was certainly delegated to UNHCR, the same cannot be said today, as the memorandum of understanding previously agreed with the UNHCR does not seem to have been renewed. As the obligation to inform foreign citizens reaching the Greek coasts has not been delegated pursuant to article 21, it falls entirely on the Greek state.

During an interview with a UNHCR member carried out during this research, it emerged that the agency’s activities, while essentially comprising the support and monitoring of the asylum procedures and information activities, are not bound by a mandate and are in fact carried out in different ways depending upon where the agency is operating.

The information received by migrants in Greece is thus often provided by members of the various NGOs working there and by the UNHCR, but in most cases the information is non-systematic, not detailed, generic and not provided in light of the individual’s particular circumstances: as a whole, it is severely inadequate.

The right to an effective remedy

As seen above, in the case of a declaration of inadmissibility or a rejection of the asylum application, Greek laws on asylum provide for the prior and mandatory complaint to the Appeals Commission against the decision issued by the Asylum service. This appeal may be submitted independently by the party within the strict term of 5 days. This complaint submitted to the administrative body is a necessary pre-requisite for an appeal to the competent jurisdictional body against a negative decision.

Above all, article 46 paragraph 1 of the procedures directive states that “Member States shall ensure that applicants have the right to an effective remedy before a court or tribunal”. With regard to effective appeal, article 46 paragraph 3 of the Directive specifies that “In order to comply with paragraph 1, Member States shall ensure that an effective appeal provides for a full and ex nunc examination of both facts and points of law, including, where applicable, an examination of the international protection needs pursuant to Directive 2011/95/EU, at least in appeals procedures before a court or tribunal of first instance”.

Clearly, the process for appealing against a decision taken by the competent authority on the merit or admissibility of the request for international protection must provide a series of guarantees in order that it may be considered effective.

In particular, the court and the re-examination and evaluation procedures of the application that was rejected or declared inadmissible must provide for the respect of the fundamental principles safeguarding the right to defence: respect of the right to be heard, a reasonable term within which to present the appeal, the impartiality and independence of the court, the right to expert advice, the legal origin of the court. In truth, it is evident that there is no need for an appeals body to strictly qualify as a jurisdictional body, in order to consider the right to an effective remedy to have been respected. The appeals commission, therefore, where it respects the guarantees imposed to safeguard
the right to defence and has the impartiality and independence typical of jurisdictional bodies, could validly guarantee an effective remedy such as to permit appellants to defend themselves against the decisions taken by the authority of first instance. However, both the composition and origin of this body and the implemented procedure, especially in view of the legislative revisions, lead [us] to conclude that the right to defence and the right to be heard, the principal and fundamental corollaries of the right to an effective remedy, are not guaranteed.

First, it is noted that the Appeals Commission reports directly to the Ministry of Interior and the legislative change that requires two of the three members to be judges does incontrovertibly guarantee the commission’s independence from the body to which it reports. The process remains an administrative one, with the judges not acting in their judicial capacity (as judges), but as mere state officials. They are chosen by the government and must answer for their actions to the government itself (which will subsequently have the task of confirming or not their participation in the commission). The peremptory deadline for the appeal is 5 days. The shortness of this deadline is mitigated by the fact that appellants are allowed to lodge their appeal autonomously and without representation by a lawyer. Nevertheless, the five-day deadline does not ensure a sufficient and reasonable amount of time to prepare a defence, even with the production of additional details on facts and points of law relating to the request. This difficulty is further exacerbated by the language and legal context which are very different from those in the appellant’s country of origin. In fact, the appellant may also be represented by a lawyer, which would allow to confer greater effectiveness to the right of defence. Nevertheless, the concrete conditions in which the appeal is conducted - as outlined above - make it especially difficult to merely find a lawyer. Not only the short deadline and the shortage of lawyers, particularly on the islands, as well as the difficult access of lawyers to the detention centres, but also the lack of free legal aid, which is not established by law in the case of appeals to administrative authorities. As far back as the memoranda, the common Asylum Procedures Directive states “In appeals procedures, subject to certain conditions, applicants should be granted free legal assistance and representation provided by persons competent to provide them under national law. Furthermore, at all stages of the procedure, applicants should have the right to consult, at their own cost, legal advisers or counsellors admitted or permitted as such under national law”. The circumstance that the appeals procedure is held before an administrative authority and that the appeal can be lodged autonomously by the appellant does not detract from the fact that a technical defence should be allowed, one most likely to ensure that the right of defence and to be heard is observed. Furthermore, proceedings before the Appeals Commission do not have the necessary procedural guarantees to assume observance of the right to be heard. Indeed, there is definitely no full examination of the appellant’s request, contrary to the requirements of Article 46 paragraph 3. In fact, the appeals commission deliberates solely on the basis of the record of the appellant’s hearing before the EASO and the appeal form, which, in the case of almost all appellants, contains only their wish to appeal the decision, but no other reasons in fact and in law substantiating the request. Furthermore, the appellant may not be heard by the Commission, even if he has requested to be heard. Indeed, in the appeal procedure, there is no obligation for the Commission to hear the appellant again in all cases, since the procedure is mainly based on an analysis of the documentation submitted.

More specifically, before the June 2016 amendment, appellants could ask to be heard again, whereas currently, the decision to do so or not is made directly by the Commission itself. This inevitably leads to a superficial analysis based on indirect evidence gathered in other hearings. Moreover, any evidence or situations that come into existence or knowledge ex nunc are not considered and may never be brought to the Commission’s attention. These circumstances, especially the absence of a real investigation, the absence of a technical defence,
the lack of provisions for free legal defence, the very short deadline for lodging the appeal and the absence of a guarantee of being heard lead [us] to conclude that the right to be heard and the right of defence are not respected. This said, the breadth and significance of the right to effective appeal has involved the European Court of Justice, which has on several occasions been called on to assess the legality of appeals procedures, especially in cases where effectiveness is not guaranteed by the judicial nature of the body with competence to rule on the appeal. In many cases, however, besides stating that there is no need for a court or tribunal to rule on the appeal, [the ECJ] has expressed itself in restrictive terms regarding the right to effective appeal and the guarantees that must be observed in the make-up of the body handling the appeals and the procedures for guaranteeing the right of defence and the right to be heard96.

Considering that the Appeal Commission and the actual procedure for examining applications in second instance proceedings are not considered to effectively and indiscriminately guarantee the right to an effective appeal, as provided by the already cited ECJ judgment of 31 January 2013 (see footnote), it is necessary to assess whether the regulatory framework can ensure, at another instance, or through an appeal to another body, the possibility of effectively bringing an appeal against the ruling given at first instance. In fact, Greek legislation provides for the possibility of appealing to the administrative judicial authority, only after a negative ruling from the Appeal Commission. Nevertheless, the negative ruling issued by the commission is effective immediately and the appeal to the administrative court or tribunal does not suspend the effectiveness of the measure.

Paragraph 5 of Article 46 of the Asylum Procedures Directive expressly states that “Without prejudice to paragraph 6, Member States shall allow applicants to remain in the territory until the time limit within which to exercise their right to an effective remedy has expired and, when such a right has been exercised within the time limit, pending the outcome of the remedy”. The only exception to automatic suspension of the contested measure is provided for in the cases referred to in paragraph 6 and, in particular, in the case of “(b) decisions to consider an application inadmissible pursuant to Article 33(2)(a), (b) or (d)”. A decision of inadmissibility is excluded, however, when there is a third

96 In its decision of 31 January 2013 in Case C- 175/11, it [the ECJ] addressed the issue of what is meant by court or tribunal, since the body designated to rule on an appeal was an administrative tribunal, the Refugee Appeals Tribunal. The ECJ court stated the following: “ In this regard, it must be borne in mind that, according to settled case-law of the Court, in order to determine whether a body making a reference is ‘a court or tribunal’ for the purposes of Article 267 TFEU, which is a question governed by European Union law alone, the Court takes account of a number of factors, such as whether the body is established by law, whether it is permanent, whether its jurisdiction is compulsory, whether its procedure is inter partes, whether it applies rules of law and whether it is independent (see, inter alia, Case C-53/03 Syfait and Others [2005]; Case C-517/09 RTL Belgium [2010]; and Case C-196/09 Miles and Others [2011] [...] The requirement that the procedure be inter partes is not an absolute criterion. [...] It is important to note that section 16(5) of the Refugee Act provides that the Refugee Applications Commissioner must provide to the Refugee Appeals Tribunal copies of all reports, documents or representations in writing submitted to him under section 11 of that act, as well as a written indication of the nature and source of any other information concerning the application of which he has become aware in the course of his investigation. [...] Thirdly, the applicants in the main proceedings submit claim that the Refugee Appeals Tribunal is not independent, as organisational links exist between it, the ORAC and the Minister for Justice, and its members are subject to outside pressure. In particular, [...] the rules governing the appointment, length of service and cancellation of the appointments of its members and other aspects of its members’ terms of office deprive that tribunal of its independence. In accordance with the case-law of the Court, the concept of independence, which is inherent in the task of adjudication, implies above all that the body in question acts as a third party in relation to the authority which adopted the contested decision [...] The effectiveness of the remedy, with regard to the examination of the relevant facts, depends on the administrative and judicial system of each Member State considered as a whole. It is therefore necessary to assess as a whole the Irish system of granting and withdrawing refugee status in order to determine whether it is capable of guaranteeing the right to an effective remedy. In the present case, [...] the applicants for asylum may also question the validity of the Refugee Applications Commissioner’s recommendations of the Refugee Applications Commissioner and the decisions of the Refugee Appeals Tribunal before the High Court, the decisions of which may be appealed to the Supreme Court. The existence of these means of obtaining redress appear, in themselves, to be capable of protecting the Refugee Appeals Tribunal against potential temptations to give in to external intervention or pressure liable to jeopardise the independence of its members.
country that may be declared safe for the applicant. Only in this case is the inadmissibility decision automatically suspensive. However, even in other cases of inadmissibility, even when the decision is not automatically suspensive, the Directive states in paragraph 6 that “a judge shall have the power to rule whether or not the applicant may remain on the territory of the Member State, either upon the applicant’s request or acting ex officio”. Furthermore, according to paragraph 8 “Member States shall allow the applicant to remain in the territory pending the outcome of the procedure to rule whether or not the applicant may remain in the territory”.

Under the Greek law this does not happen: a negative decision issued by the appeals commission becomes immediately enforceable, thus none of these guarantees are respected. It is clear that suspension of the contested decision is an unavoidable guarantee, that safeguards the right of defence, because without that the appellant may be transferred and repatriated before having access to a technical defence (which, at this stage, is mandatory).

It is clear that, under the Greek asylum law, the right to an effective remedy cannot be guaranteed.

The admissibility procedure for asylum applications

The EU-Turkey Agreement urges Greece to submit international protection applications to the admissibility procedure and then to readmit to Turkey people whose applications are deemed to be inadmissible. This procedure can only be based on the consideration that Turkey is a safe country where fundamental rights and freedoms are respected, along with the right not to be rejected and returned to countries where their safety and lives are not guaranteed. However, this is not the case, inasmuch as it is possible to consider that inadmissibility decisions and the very basis of the agreement are in breach of Article 33 et seq. in which the Asylum Procedures Directive requires applicants to be readmitted to a safe third country or a country of first asylum. These conditions certainly cannot be said to be respected by Turkey.

This procedure, transposed into the Greek asylum law even before the agreement, is provided for in Article. 33 of the Asylum Procedures Directive: “Member States may consider an application for international protection as inadmissible only if [...] b) a country which is not a Member State is considered as a first country of asylum for the applicant, pursuant to Article 35; c) a country which is not a Member State is considered as a safe third country for the applicant, pursuant to Article 38”. Specifically, in accordance with Article 35: “A country can be considered to be a first country of asylum for a particular applicant if: (a) he or she has been recognised in that country as a refugee and he or she can still avail himself/herself of that protection; or (b) he or she otherwise enjoys sufficient protection in that country, including benefiting from the principle of non-refoulement, provided that he or she will be readmitted to that country”. Article 38 states: “Member States may apply the safe third country concept only where the competent authorities are satisfied that a person seeking international protection will be treated in accordance with the following principles in the third country concerned: (a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion; (b) there is no risk of serious harm as defined in Directive 2011/95/EU; (c) the principle of non-refoulement in accordance with the Geneva Convention is respected; (d) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and (e) it is possible to request refugee status and, if granted, to receive protection in accordance with the Geneva Convention”.

Lastly, Article 35 refers Member States to take into account paragraph 1 of Article 38 when defining
the concept of country first of asylum. The two concepts, of country of first asylum and safe third country, though relating to different situations, can therefore be used to complement each other in meaning.

These provisions, already transposed into the previous Presidential Decree No 113/2013 are also referred to in Greece’s new law on asylum No 4375 of 2016.

In the declaration of inadmissibility procedure for the application for international protection, the competent body, in this case the Asylum Service, on the basis of the interview report and the opinion of the EASO, must assess whether the requirements of the law are met.

The practical application of the Agreement and, hence, the admissibility procedure, are based on the fundamental and not necessarily funded assumption that Turkey can be considered a safe country or a country of first asylum for asylum seekers arriving in Greece. In the Agreement, the EU appears not to go into the subject sufficiently, even though it is central to the economy of the entire admissibility procedure.

The safety of Turkey should be assessed with reference to the criteria set out above. However, an individual examination is still required to confirm the presumption of safety specifically for each individual, also to allow them to contest the application of these legal categories against them. Moreover, Greece has never adopted a list of safe third countries. This means that the competent authorities are responsible for assessing, on a case-by-case basis, whether Turkey can be considered a safe country for the applicant and thus declare the inadmissibility of the application or examine its merits.

In terms of legislation, Turkey is a party to the Geneva Refugee Convention of 1951, but limited to the application of the so called geographical clause, meaning solely for those seeking international protection who are originating from Europe. Syrian asylum seekers, on the other hand, are only entitled by law to a temporary form of protection. However, this protection would cease after a person left Turkey. Therefore, Turkey is committed to changing the law to allow those who are repatriated to be granted the protection again.

Lastly, Turkey has acknowledged the need to make the treatment of beneficiaries of temporary protection more like the treatment given to refugees. This would allow them access to the Turkish job market, obviously in addition to meeting the other minimum standards of reception, which the EU also supports financially. In fact, as is clear from the implementation report of the Declaration, Turkey later adopted a law that specifies that Syrian citizens sent back on the basis of the new provisions can apply for and receive temporary protection. This applies to Syrian citizens who had previously been registered in Turkey and to those who had not. Theoretically, Turkey appears to meet the criteria set out in Article 35 of Directive 2013/32 and thus to qualify as a country of first asylum only for Syrian citizens, who are the only ones who would be given temporary protection. Conversely, it cannot be said that the stricter parameters referred to in Article 38 of the Asylum Procedures Directive on safe third countries are met.

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97 Specifically, Article 54 of the law states: “A country shall be considered to be a first country of asylum for an applicant provided that the applicant has been recognised as a refugee in that country and can still enjoy that protection or enjoys other effective protection in that country, including benefiting from the principle of non-refoulement”. Whereas according to Article 56 a safe third country is “the country in which the asylum seeker can benefit from all of the following safeguards: - the applicant’s life and liberty are not threatened for reasons of race, religion, nationality, membership of a particular social group or political opinion, - this country respects the principle of non-refoulement, in accordance with the Geneva Convention, - the applicant is in no risk of suffering serious harm according to Article 15 of Presidential Decree 141/2013, - the country prohibits the removal of an applicant to a country where he/she risks to be subject to torture or cruel, inhuman or degrading treatment or punishment, as defined in international law, - the possibility to apply for refugee status exists and, if the applicant is recognized as a refugee, to receive protection in accordance with the Geneva Convention and - the applicant has a connection with that country, which makes it reasonable for the applicant to be moved there”. 

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Indeed, it is quite clear that there is a failure to comply with the criterion of the possibility to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention. In fact, Article 38 states that, in order to be considered a safe third country, all the conditions set out therein must be respected: these conditions include the possibility to request refugee status. Hence, Turkey clearly does not meet this parameter and, in fact, only Syrian citizens are currently subjected to the admissibility procedure and are entitled to temporary protection in Turkey, and to them only can the provision set out in Article 35 on the first country of asylum be applied.

Moving from the examination of the legislative framework to its effective implementation, the situation is much more critical. In fact, although a certain standard of treatment and respect of fundamental guarantees is provided for in legislation, there are numerous reports and complaints from non-governmental organisations, many of which with strong professional expertise in asylum-related issues, claiming that Turkey cannot qualify as a safe third country, both in terms of respect for human rights and in terms of guarantees related to international protection. Likewise states the resolution of the Parliamentary Assembly of the Council of Europe, based on a thorough legal analysis of and on a report on the treatment of asylum seekers and beneficiaries of international protection in Turkey. Breaches of the Directive can be brought before the European Court of Justice in the manner to be described in the section on the breach of the Treaty on the Functioning of the European Union.

II. BREACHES OF THE RECEPTION CONDITIONS DIRECTIVE, 2013/33/EU

**Reception conditions**

The reception conditions and detention procedures observed are, in numerous respects, in breach of EU legislation and international conventions. Indeed, the Reception Conditions Directive - accepted by Greece also - sets out guarantees and minimum standards of reception for all stages and all types of

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98 Although many consider that the rule does not expressly require being a party to the 1951 Convention, but rather that refugee status should be granted along with treatment in accordance with said Convention, in fact the opposite interpretation should be taken. Indeed, where legislators have requested alternatively refugee status and another sufficient protection, as in Article 35, they expressly state that said protection should meet criteria that are equivalent to actual refugee status. Therefore, if they had wished to indicate other forms of international protection, differing from refugee status but having similar content, they would have used the notion of sufficient protection, specifically to differentiate it from the former. On this point, there are two conflicting interpretations: the first, in agreement with the above, see C. Favilli, “La cooperazione Ue-Turchia per contenere il flusso dei migranti e richiedenti asilo”, op. cit. p. 7. The opinion of the UNHCR differs in “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, www.refworld.com.


100 Council of Europe, Resolution 2109(2016) of the Parliamentary Assembly of the Council of Europe adopted 20 April 2016, based on the report doc. 14028 of 19 April 2016, “The situation of refugees and migrants under the EU-Turkey Agreement of 18 March 2016”.

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procedures involving applications for international protection, in all places and all reception centres for applicants, as set out in the preamble itself.

Undoubtedly, owing to the stated need to prevent asylum seekers from leaving the islands to go to the mainland, practical application of the agreement has led to the exponential and uncontrolled rise in the number of people remaining on the islands, in centres designed for quick registration or in tolerated non-government centres that have sprung up as an emergency measure to respond to the lack of space at the registration camps. However, as already noted, the intolerable and very serious health and hygiene conditions, the shortage of food and water, the lack of proper and suitable health care facilities also affect the camps on the mainland, which, on the contrary, are numerous and widespread throughout the territory. Asylum seekers, including vulnerable people, entire families, and migrants with serious health conditions, continue to live in conditions very similar to those found in informal camps which the government is working to dismantle (e.g. the port of Piraeus or the so called Eko Camp, near Thessaloniki).\(^{101}\)

It is obvious that the Reception Directive is being violated. **The material reception conditions necessary for providing an adequate standard of living for applicants that guarantees their subsistence**, with particular emphasis on - also through principal reception measures - vulnerable persons and family units such as provided for in Article 17, are not guaranteed in the government centres and camps where applicants first register on the islands. Many of the people we encountered in this respect pointed out that, in cases where a person detained or “welcomed” in a centre on one of the islands was regarded as a vulnerable person – for example in the case of a pregnant woman or someone who is severely ill – there was a possibility that such a person could be transferred to the mainland, but at the cost of being separated from their families, who were not given permission to go with the vulnerable family member.

**The same applies to health care:** the national health care system cannot cope with the need for health care required by migrants housed in governmental centres; therefore, very often the healthcare is provided through the intervention of international organizations or volunteers, who unfortunately cannot guarantee the same level of continuous and widespread access to health care throughout the territory. However, Article 19 stipulates that Member States are not only to provide the necessary health care which will include, at least, emergency care and essential treatment of illnesses and of serious mental disorders, but are also to provide necessary medical assistance to applicants who have special reception needs, including appropriate mental health care where needed. Clearly, the organizations providing health services – even free of charge at the government camps – are unable to ensure that people have access to this essential and fundamental right.

**The same applies to care provided to minors. Not only unaccompanied foreign minors are often detained together with adults or in dilapidated and abandoned structures** in total disregard of national and international legislation, but the infringement of Article 23(2) of the said Directive is even more blatant when there is no rapid and effective access to assistance for children who have suffered abuse, ill-treatment, torture or are victims of armed conflicts.

**Regulations on the protection of unaccompanied minors**

Both the Reception Conditions Directive and the Asylum Procedures Directive provide for a series of

guarantees for the reception and examination of a request for international protection submitted by an unaccompanied minor. The present examination did not consider - as a specific target – the reception conditions and the compliance with the rules in relation to this category of subjects. However, some violations appeared to be blatant, in particular **the detention of unaccompanied foreign minors in closed centres on the islands or in pre-removal camps on the mainland.** In fact, Article 10(3) of the Reception Conditions Directive provides, with respect to the detention of unaccompanied foreign minors, that “Unaccompanied minors shall be detained only in exceptional circumstances. All efforts shall be made to release the detained unaccompanied minor as soon as possible. Unaccompanied minors shall never be detained in prison accommodation. As far as possible, unaccompanied minors shall be provided with accommodation in institutions provided with personnel and facilities which take into account the needs of persons of their age. Where unaccompanied minors are detained, Member States shall ensure that they are accommodated separately from adults”. However, **unaccompanied foreign minors arriving in Greece are systematically detained in the Vial and Moria registration centres without assessing whether exceptional circumstances should be consider in their detention.** Unaccompanied foreign minors have also been identified in centres on the mainland, including **pre-removal camps.** In these centres, minor migrants are held in facilities in close contact with adults. Isolation and detention also expose minors to **greater legal vulnerability**, inasmuch as it is difficult for them to have access to a technical defense that can protect their rights and demand compliance with the guarantees laid down in the provisions to protect the specific vulnerability associated with minors.

**Regulations on the protection of vulnerable persons**

Greek legislation fully incorporates the categories of vulnerable persons as introduced in the Directive. Article 21 of the Reception Conditions Directive, in fact, provides that “**Member States shall take into account, in national law implementing this Directive, the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation**”. In addition, Article 22 of the same Directive goes on to specify when the screening is to take place: “**In order to effectively implement Article 21, Member States shall assess whether the applicant is an applicant with special reception need as well as the specifics of the needs. Such assessment shall be initiated within a reasonable period of time after an application for international protection is made, and may be integrated into existing national procedures**”. However, as far as could be observed, the screening of vulnerable persons is not carried out in any systematic and detailed manner, instead it is delegated to many public or private entities that, at **different times and randomly, evaluate the situation and declare the status of vulnerability.** Article 22 also specifies general reception standards for persons falling under the category of vulnerable persons, with the subsequent provisions specifying in greater detail what this support should encompass: “**Member States shall ensure that the support provided to applicants with special reception needs in accordance with this Directive takes into account their special reception needs throughout the duration of the asylum procedure and shall provide for appropriate monitoring of their situation. 2. The assessment referred to in paragraph 1 need not take the form of an administrative procedure. 3. Only vulnerable persons in accordance with Article 21 may be considered to have**
special reception needs and thus benefit from the specific support provided in accordance with this Directive”.

As seen from the above discussion of the reception system and the procedures involved, vulnerable persons are often received or detained (including families with children) in facilities with minimum capacity and without being able in any way to guarantee an adequate standard of rights. Vulnerable persons who, thanks to the help of NGOs, the UNHCR or government intervention, manage to obtain alternative accommodation more suitable to their needs are very few in number. Indeed, the support offered to vulnerable persons is sporadic, does not follow clear criteria of priority and very often relies on the reception and organizational capacities of associations and volunteers.

Territorial limitation of residence and movement

As already mentioned, after having been actually or notionally detained in pre-registration centres on the islands for a maximum period of 25 days (at least in those on Chios and Lesvos visited by the research group), applicants who disembark on the Greek coast are allowed to move freely only within the perimeter of the island on which they are hosted.

The possibility of limiting the movement of asylum seekers to a specific geographic area is provided for in Article 7 of the Reception Conditions Directive: “1. Applicants may move freely within the territory of the host Member State or within an area assigned to them by that Member State. [...] 2. Member States may decide on the residence of the applicant for reasons of public interest, public order or, when necessary, for the swift processing and effective monitoring of his or her application for international protection”.

Therefore, if provided for by national law, the responsible administrative authority can issue a measure to limit the freedom of movement to a specific territory (as happens on the islands with the notification of the measure following the expiry of the 25 days of detention), a measure to specify the place of residence, or a measure which establishes the residence of the applicant and the area within which he/she can move.

Unlike paragraph 2, paragraph 1 of Article 7 does not specify the reasons on which a decision to restrict the residence of asylum seekers to a specific area should be based, which is why the decision to restrict freedom of movement appears to be left up to the responsible administrative authority, and there are very many reasons on which to base such a decision. However this does not mean that the measure of restricting freedom of movement can be generally applied to an indefinite number of people purely on the basis of having arrived on the island after 20 March. Indeed, the requirement for the measure to be based on individual assessment is not merely the only solution that would comply with the most basic administrative rules, but is also laid down in Article 26 of the Directive: “Member States shall ensure that decisions relating to the granting, withdrawal or reduction of benefits under this Directive or decisions taken under Article 7 which affect applicants individually may be the subject of an appeal within the procedures laid down in national law”. However, individual assessment never takes place when it comes to decisions about limiting territorial freedom of movement: asylum seekers are systematically notified of the measure – on a standardised form – which forces them to stay on the island. The lack of individual assessment is further illustrated by the fact that not everyone - at least on the island of Chios - was subject to the measure of freedom of movement restriction; however, this people were not allowed to get on a ferry to leave the island and move to other parts of Greece as the others. This is further confirmation of the fact that this restriction of the freedom of movement is being systematically applied to all asylum
Detention of asylum seekers

The Reception Conditions Directive is likewise also violated in the part where it provides for the use of detention for asylum seekers. We must first clarify that the reference to the rules set forth by the Reception Conditions Directive on detention is due to the fact that, as we have repeatedly said, nearly all foreign citizens who land on the islands file applications for international protection and formally assume the status of asylum seekers. For these reasons, we shall not analyse the different rules set forth by Directive 115/2008 /EC.

It should be observed that, as mentioned in the preamble of this Directive, asylum seekers can be deprived of their liberty only following an individual assessment and where less coercive means are unavailable. In addition, the Directive sets forth the modalities in which detention can be put in place and extended, as well as the guarantees for asylum seekers in detention: first, the right to receive written information about the reasons for the detention and the possibility of appealing the order of detention.

With regard to the administrative procedures related to the reasons for detention, the Directive at least requires “that the Member States take concrete and significant measures to ensure that the time necessary to verify the reasons for detection is as short as possible so that the detention does not exceed the time reasonably necessary to complete the relevant procedures”.

However, given these very clear provisions of the Reception Conditions Directive, it is necessary to consider the provisions of the Greek law on asylum. In fact, despite containing the express provision that a foreign citizen cannot be detained for the sole reason of having submitted an application for international protection, Art. 46 of this Law states that a migrant, upon arrival in the Greek territory, can be detained at the Reception and Identification Center (RIC) to undergo screening, registration, a medical check-up and referrals for a period not exceeding 25 days. As stated in Article 14 of the same Greek law on asylum, the manager of the centre can decide to restrict the freedom of citizens from third countries.

Furthermore, according to the Greek law on asylum, migrants whose freedom has been restricted...
should be informed of the content of the detention order in a language they understand, and the ruling to extend the restrictions on their personal freedom in order to complete the registration and identification procedures should itself be put in writing along with the de facto and de jure reasons.

In addition to the rights already recognized by the administrative code, detained persons may appeal the ruling to impose the extended restriction of personal freedom with the Presiding Judge or a judge appointed by the Presiding Judge at the District Administrative Court with territorial jurisdiction over the reception and identification centre.

The latter provision seems in line with the already cited Reception Directive, which, under Art. 9, states that “The detention of asylum seekers is ordered in writing by the judicial or administrative authority. The detention order specifies the de jure and de facto logic on which it is based. 3. If detention has been ordered by the administrative authorities, Member States ensure a quick judicial verification, ex officio and/or at the request of the applicant, of the lawfulness of the detention. [...] Asylum seekers in detention are immediately informed in writing, in a language they understand or are reasonably supposed to understand, about the reasons for the detention and the procedures set forth by national law to challenge the detention order as well as the option for free legal assistance and/or representation. If circumstances occur or new information emerges that would call into question the legality of the detention, the detention order shall be reviewed judicially within a reasonable period of time, ex officio and/or at the request of the applicant in question, particularly in the case of prolonged detention periods”.

However, these provisions are, as noted, systematically violated.

Firstly, those who land on the islands, as has been repeatedly stated, are systematically detained at the initial reception facilities. The orders for detention, if notified, do not include specific reasons, giving the impression that the detention is not individually determined but rather indiscriminately applied to all those who have arrived on the islands after March 20. In particular, in Lesbos, all migrants who arrived after March 20 are held at the Moria centre and given a detention order. In Chios, most migrants are the recipients of an order of detention, but the registration center remains open for safety reasons so guests can enter and exit the centre without apparent restrictions. The opening of the centre is, however, only a de facto situation, which can always change.

Notification of the measure - if it occurs - does not guarantee the effective possibility to pursue the legal remedies provided for by European law as well as acknowledged by Greek law. In fact, the measure is only in Greek, without any translation into the foreign citizen's language or in a language that s/he presumably knows as required by the Directive.

Lack of knowledge about the contents of the document impact the actual opportunity to contact a lawyer to file an appeal with the competent administrative court. Moreover, even if this were possible, the effective conditions to exercise the right to defence are made particularly difficult by the small number of lawyers present on the islands and, even more so, by the remoteness of the courts (the Administrative Court of Lesbos has jurisdiction to hear appeals of orders issued in Chios and the Appellate Court is still further away, in Athens).

Finally, it should be noted that pursuant to Art. 9, paragraph 2 of the Reception Directive, “The administrative procedures relating to the reasons for detention set forth in Article 8, paragraph 3 are carried out with due diligence. Delays in the administrative procedures not attributable to the applicant do not justify a continuation of the detention”. The violation of this regulation is obvious on the island of Lesbos, where people are detained even longer than the 25 days set forth by law, waiting for the issuance of an order with which they regain the freedom to move about within the perimeter of the island only. This measure was found to be issued 2-3 months after the expiration of the 25-day term.
Against these violations of the Reception Conditions Directive, appeals has been filed with the European Court of Justice according to the methods which will be described in the paragraph on the violation of the Treaty on the Operation of the European Union.

III. VIOLATIONS OF THE CHARTER ON FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Inhuman and degrading treatment

The situations observed show the total destitution in which asylum seekers, unaccompanied minors and vulnerable persons live. The Greek state should ensure a reception and assistance system based on the vulnerability of the subjects in question. On the contrary, they are treated poorly and in a way that does not respect their dignity since they are, in fact, forced to live in self-managed camps, in tents, without water, electricity and with very poor health-sanitation conditions. The situation in the government camps visited is only minimally better. These very seriously precarious conditions and the risk of physical injury, without any kind of assistance and social-health monitoring, is a blatant violation of Art. 4 of the EU Charter which states “No one shall be subjected to torture or to inhuman or degrading treatment”. An appeal has been filed with the European Court of Justice according to the methods which will be described in the paragraph on the violation of the Treaty on the Functioning of the European Union.

The right to asylum and the prohibition of collective expulsions

The situation reported and observed shows that readmissions to Turkey are currently proceeding extremely slowly and therefore the risk of collective expulsion has not been the subject of a detailed discussion. However, we must emphasize that the previously discussed readmissions to Turkey which took place in April, were condemned by several parties for failing to take in due consideration individual petitions by the people being repatriated. Moreover, it is believed that the same naval blockade that prevents migrants from reaching the Greek coast has been fortified and engaged in systematic expulsions, which also prevents migrants from applying for international protection and reporting on dangerous or unsafe conditions which may exist in Turkey. Such behaviours lead us to consider that provisions in Art. 18 and 19 of the Charter of Fundamental Rights of the European Union, stating “The right to asylum is guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967, relating to the Status of Refugees, and pursuant to the Treaty establishing the European Community” and that “collective expulsions are prohibited”, have been violated.

Moreover, vigilance around collective expulsions should be at its highest if readmission channels to Turkey are reopened, as suggested in the EU-Turkey Agreement and the subsequent acts that, however, at the moment, are still not fully applied.
IV. VIOLATIONS OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Inhuman and degrading treatments

What has been observed until now constitutes a breach of the rules contained in the European Convention on Human Rights. In particular, there are obvious and real risks that the decisions to not grant international protection could be taken without the proper assessment for the specific case of the risks to which the applicant may be exposed in Turkey, and of the danger that the applicant (and his/her nuclear family) may be sent back to his/her country of origin. The same procedure set forth in the Directive and transposed into Greek law, as stated in the Agreement, is marked by its rapidity and quick decisions on admissibility and inadmissibility. Similarly, the limitation of personal liberty, the lack of real and effective guarantees about access to a legal defence and an effective appeal process increase the risk that the decision could be made without the necessary and essential guarantees of the right to be heard. Indeed, investigations must be intensified considering the situation in Turkey where, even in the case of Syrian citizens, there is a likely risk of violations of the prohibition of non-refoulement, of persecution due to personal circumstances, as well as the impossibility of planning a stable future for the entire family unit given the difficult access to employment, health and education for non-Turkish. Therefore, the European Court of Human Rights could take up cases for violation of Art. 3 of the CEDU, which states that “No one shall be subjected to torture or to inhuman or degrading treatment”. In fact, there could be a dual violation of the provision: applicants may be subject to humiliating living conditions and inhuman treatment in Turkey, and may also be repatriated to their countries of origin where there is no guarantee that their human rights and fundamental freedoms will be respected.

The European Commission (notice of 16/03/2016) acknowledges that as long as Turkey and Greece do not ensure the full respect of the principle of “non-refoulement”, any measures taken as a result of the agreement will not comply with European and international law.

In addition, the risk of suffering inhuman or degrading treatment is possible given the reception centre conditions. As shown throughout the present report, the absolute destitution in which asylum seekers, unaccompanied minors and vulnerable persons live is quite evident. The Greek state should ensure a reception and assistance system adapted to the vulnerability of the subjects in question. On the contrary, they are subject to degrading treatment lacking in dignity since they are, in fact, forced to live, both in formal and self-managed camps, in tents without water and electricity in critical hygienic and sanitation conditions.

The right to personal liberty and effective remedy

Article 5 states that “Everyone has the right to liberty and security of person. No one may be deprived of his/her liberty except in the following cases and as prescribed by law”.

Article 13 should be considered in close correlation with this. “Everyone whose rights and freedoms recognized by this Convention have been violated shall have the right to an effective remedy before a national authority regardless of whether the violation has been committed by persons acting in an official capacity”. Indeed, on top of the restrictions on personal freedom within the reception centres on the islands, which were closed after the Agreement went into effect to ensure the rapid and
effective registration of all migrants, **territorial limitations have also been imposed on migrants on the islands where they arrive.** Both these limitations on liberty can be challenged based on Article 5 of the European Court of Human Rights.

The European Court of Human Rights has repeatedly been called upon to assess the scope and meaning of the “restrictions on freedom” and the “deprivation of liberty” as defined by Article 5 of the European Court of Human Rights. The court in a number of very important rulings, including the *Guzzardi v Italy*, 6 November 1980, requires that in assessing whether there has been a “deprivation of liberty” in accordance with Article 5, we must start by analyzing the concrete situation by considering a set of parameters, such as type, duration, effects and implementation method for the measure. Indeed, based on the analysis of the factors on which the restriction on freedom takes place, the limitation can be considered not merely as a restriction but as a deprivation of personal liberty. In particular, we should be evaluating factors such as forced stay within the confines of a small village, difficulty of access, the limited social contacts, the population make up, exclusively of prison guards and the people subjected to the same measures, and the fact of being subjected to strict surveillance, the breach of which is punishable by arrest.

The limitation of personal freedom within the hotspot, especially Moria, could easily be considered not merely a restriction but **a real deprivation of liberty equal to a form of detention**.

The restriction of freedom of movement within the islands is harder to classify. However, we could rely on the concrete elements already provided regarding reception centre conditions, access to basic health services, etc. to claim that the provisions in of Article 5 also apply to this situation.

Indeed, the possibility to apply the individual case to Article 5 is due to the applicability of a number of safeguards provided for cases where there is a deprivation of liberty. In fact, in case of deprivation of liberty - as least in the cases of detention in hotspots – there must be a legal basis for the deprivation as well as legal justification and goals that the government aims to achieve. In addition, all the required procedural safeguards must be applied, namely access to free legal advice, timely notice of an administrative act, a judicial review of the deprivation of liberty and the possibility of appeal against the deprivation of personal freedom without any undue obstacles to prevent access to the remedy.

An appeal may be filed against these violations with the European Court of Human Rights. Filing an appeal to the European Court is permitted only after all domestic appeals are exhausted and, in any case, no later than six months from the day of the final ruling of the domestic authority or if the domestic Court cannot hear the matter within six months from when the plaintiff suffered the violation. The letter may be written by the citizen directly, without following any special protocols and without the assistance of a technical defence. The Court, in response to the citizen, will sends an appeal form to be filled out and sent in three copies within six weeks of receiving the letter. The Court hands down its ruling and requires the parties to comply with the final ruling of the Court for disputes to which they are party as per Article 46 of the European Court of Human Rights. Indeed, in response to an adverse ruling of the Court of Strasbourg, the State, which is violating the law, must remove the causes of the violation through general or individual measures and, only then, when the identification and the removal of the violation does not constitute in itself sufficient satisfaction, [the State] has the obligation to pay fair compensation.
V. VIOLATION OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION

The agreement or statement (considering the formation of the act, as better explained later on) has attracted a lot of criticism. In fact, the agreement is based on flimsy legal basis that, from a legal point of view, makes it nothing more than a statement in violation of Parliament’s prerogatives. Indeed, as eloquently put, Article 218 of the TFEU applies for the signing of international agreements whereas there are no specific procedures to sign other soft law international acts.

The statement would not seem to be a real international agreement: in fact, it was adopted by the Turkish Prime Minister and members of the European council. It was negotiated informally and has never been approved by any Parliament, whether domestic or European. If this were the case, and even some formal elements could confirm it, the agreement is merely a non-binding declaration. However, if we considered this statement as binding, then the drafting process that follows was done in violation of the procedural safeguards. Article. 218 of the TFEU, in fact, states that the Commission must negotiate agreements on migration and Parliament is referred to as the body that must approve certain categories of international agreements, including, among others, those impacting sectors to which the ordinary legislative procedure applies. The ordinary legislative procedure, in fact, applies, pursuant to Art. 79 of the TFEU, the common immigration policy “on strengthening the prevention and fight against illegal immigration - meaning, the material scope of the EU-Turkey Declaration. Yet, as mentioned above, Parliament does not seem to have been involved in the adoption of the Declaration”.

However, the parties have agreed to accept specific obligations, including the introduction of original obligations rather than just reproducing forecasts already contained in previous readmission agreements: it is obvious that the EU and Turkey were not going to agree on a non-binding text, but rather enter into an international agreement which – however – did not include procedural guarantees provided for by EU law and which could be annulled by the Court of Justice for the European Union.

Article 263 TFEU in the first paragraph, on the role played by the European Court of Justice (ECJ), states that “The ECJ shall review the legality of legislative acts, acts of the Council, the Commission and the European Central Bank, other than recommendations and opinions, and of acts of the European Parliament and the European Council intended to produce legal effects with respect to third parties. It shall also review the legality of acts of bodies or agencies of the Union intended to produce legal effects with respect to third parties”. Also, for what interests us, under Article 263, fourth paragraph, TFEU, “[A]ny natural or legal person may (...) institute proceedings against an act addressed to that person or which concerns their person directly and individually, as well as against a regulatory act which directly pertains to them and that does not entail any implementing measure”. As interpreted by the Court in its judgement in Adedy et al. v. Council, T - 541/10, this provision limits the possibility to lodge the procedure for revocation to just three categories of acts: first, the acts of which they are the recipient; second, the acts that concern them directly and individually; and, third, a regulation which directly pertains to them and that does not entail any implementing measure. In addition, initiating such remedy requires that a natural or legal person must be directly concerned

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102 In particular, see “The final EU/Turkey refugee deal: a legal assessment” by Peers; “EU–Turkey Refugee Deal Is Vulnerable to Legal Challenge” by Mandal; “The European Union–Turkey Agreement: false pretenses or a fool’s bargain?” by Labayle; “Will the EU-Turkey migrant deal work in practice?” by Chetail.

103 See the Gatti and Favilli articles cited several times.
by the decision object of the appeal, and that the contested Community measure directly affect the legal situation of the individual and leave no discretion to the addressees of the appeal in charge of implementing it. Such implementation being purely automatic and resulting from Community rules without the application of other intermediate rules. The appeal has very short time limit: namely the last paragraph provides that “The proceedings provided for in this Article shall be instituted within two months from, according to the case, the publication of the measure, its notification to the plaintiff or, failing that, from the day when the applicant become aware of it”.

The opportunity for natural persons to initiate the appeal is definitely limited both by the restrictive interpretation provided by the European Court of Justice on the legal standing, and by the short time limit for filing an appeal.

Presently there are three applications for the revocation of the agreement presented by three asylum seekers in Greece pending before the Court (Cases T-192/16 NF v. European Council T-193/16 NG v. European Council T-257/16 NM v. European Council.)

In addition, the appeal could also - within the same time limit - be brought by the European Parliament which could challenge the legal nature of the Declaration in relation to the infringement of its own prerogatives. In that period, however, the lack of interest of Parliament to appeal to the ECJ against the legality of the act has been very clear.

In addition to this remedy, in order to challenge the validity of the agreement, it is possible to claim, in front of the Court of Justice of the European Union, an infringement of the essential procedural requirements through a preliminary ruling appeal under Article 267 TFEU. Namely, pursuant to art. 267, the Court of Justice of the European Union can be asked by a national court, to rule also on the validity and interpretation of acts carried out by Union institutions, bodies, offices or agencies. Such question can be raised during a case pending in front of a national court by the persons concerned by the measures taken by Greece in the implementation of the agreement. If the competent court for the purposes of the appeal considers that the question raised is necessary in order for it to render the judgement, it will refer to the Court for a ruling on that issue. If the competent court to hear the case is also the court of last resort, the same must necessarily bring the matter before the Court.

VI. VIOLATION OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS. COMMUNICATIONS AND INDIVIDUAL COMPLAINTS TO THE HUMAN RIGHTS COMMITTEE

Article 7 of the International Covenant on Civil and Political Rights, of which Greece is also part, in accordance with the previously examined European Union and international law, states that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment”. That provision was interpreted by the Human Rights Committee with the General Comment No. 20 (10/03/1992) stating in paragraph 9 that “Member States must not expose individuals to the danger of torture and other cruel, inhuman or degrading punishment or treatment upon their return to another country, following their extradition, expulsion or refoulement”. This rule is also designed for the protection against the risk of being subjected to indirect refoulement.

Under Article 41, referral may be made to the Committee by a Member State which considers that another Member State is not applying the provisions of the aforementioned Covenant. It is possible, in this case, to draw attention to the issue, by written notice.

In addition, the Optional Protocol to the Covenant provides that even individuals who consider
themselves victims of a violation of one of the rights recognized in the Covenant can personally submit communications to the Committee for Civil and Political Rights. Indeed, any individual claiming that any of the rights enunciated in the Covenant has been violated, and having exhausted all available domestic remedies, may submit a written communication to the Committee for consideration. The Committee, in such cases, shall bring any communications submitted to it to the attention of the Member State alleged to be violating any provision of the Covenant. Within the following six months, the requested State shall submit to the Committee written explanations or statements clarifying the matter and specifying, where appropriate, the measures that may have been taken to remedy the situation. Finally, Article 5 states that the Committee shall consider communications received under this Protocol in the light of all written information made available to it by the individual and by the Member State concerned and reports on its considerations to the Member State concerned and the plaintiff.
The former Athens airport at Elliniko turned into a refugee camp for more than 3,000 people, June 2016.
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