



**Submission by the Office of the United Nations High Commissioner for Refugees
in the case of *N.E. and Others v. Greece* (Appl. no. 8716/20)
before the European Court of Human Rights**

1. Introduction*

1.1. UNHCR has been entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and, together with Governments, to seek solutions for them.¹ Moreover, UNHCR is also responsible for supervising the application of international conventions for the protection of refugees.² UNHCR welcomes the opportunity to intervene in this case, as granted by the European Court of Human Rights ('the Court') by its letter of 14 October 2020.

1.2. The question before the Court is, in essence, whether the living conditions of the applicants were compatible with Article 3 and/or Article 8 of the European Convention of Human Rights. While UNHCR will not address nor comment on the facts or merits of the case, it will provide its interpretation of the relevant principles of international and European law governing the reception of asylum-seekers, as well as key procedural guarantees in this regard, in order to assist the Court in its deliberations (Part 2). This submission also addresses the relevant domestic legislative framework and practice applicable in Greece, particularly on the Greek islands (Part 3).

2. Principles of international and European law and key procedural guarantees in the context of reception of asylum-seekers

2.1. The right to an adequate standard of living

2.1.1. While the 1951 Convention does not contain specific provisions on the reception of asylum-seekers, its implementation depends upon fair and expeditious asylum procedures, which, in turn, are closely related to the quality of reception.³ To ensure the rights enshrined in the 1951 Convention, asylum-seekers should therefore enjoy an adequate standard of living throughout the asylum procedure and in line with international human rights law⁴ which recognizes the right of all individuals to an adequate standard of living,⁵ including the provision of food, clothing and accommodation to those asylum-seekers who are unable to secure these.⁶

2.1.2. UNHCR's Executive Committee ('ExCom')⁷ has stressed that '[w]hile there is scope for flexibility in the choice of reception arrangements to be put in place, it is important that the various reception measures respect

* This submission does not constitute a waiver, express or implied, of any privilege or immunity which UNHCR and its staff enjoy under applicable international legal instruments and recognized principles of international law. UN General Assembly, *Convention on the Privileges and Immunities of the United Nations*, 13 February 1946, <https://www.refworld.org/docid/3ae6b3902.html>.

¹ UNGA, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), para. 1 ('UNHCR Statute'), <http://www.unhcr.org/refworld/docid/3ae6b3628.html>.

² *Ibid.*, para. 8(a) and Article 35 of the *1951 Convention relating to the Status of Refugees* ('1951 Convention') and Article II of the *1967 Protocol Relating to the Status of Refugees* ('1967 Protocol'), <https://www.unhcr.org/4ec262df9.pdf>.

³ 'A significant reduction in basic reception conditions, notably in levels of subsistence, may inhibit the scope for the applicant to seek advice, gather and present relevant information and focus on the provision of information relevant to his or her claim.' UNHCR *Comments on the Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast) – COM (2016) 465*, August 2017 ('UNHCR RCD Comments 2017'): <https://www.refworld.org/docid/59a6d6094.html>, p. 5. See also, UNHCR, *Discussion Paper on Recommended Reception Standards for Asylum-Seekers in the Context of the Harmonisation of Refugee and Asylum Policies of the European Union*, June 2000, <https://www.refworld.org/docid/3ae6b3378.html>, para. 1.

⁴ UNHCR RCD Comments 2017, note 3 above, page 5.

⁵ Article 25, UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), <https://www.refworld.org/docid/3ae6b3712c.html>; Article 11, UN General Assembly, *International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights*, 16 December 1966, A/RES/2200, <https://www.refworld.org/docid/3b00f47924.html>.

⁶ UNHCR, *Reception of asylum-seekers, including standards of treatment, in the context of individual asylum systems*, 4 September 2001 ('UNHCR Note on reception'), <https://www.refworld.org/pdfid/3bfa81864.pdf>, para. 3.

⁷ The Executive Committee of the High Commissioner's Programme functions as a subsidiary organ of the UN General Assembly. ExCom Conclusions are adopted by consensus by its Member States and can be considered as reflecting their understanding of legal standards regarding the protection of refugees. At present, 106 States are Members of the Executive Committee, including Greece which has been a member since its creation in 1958, <https://www.unhcr.org/excom/announce/40112e984/excom-membership-date-admission-members.html>.

human dignity and applicable international human rights law and standards'.⁸ ExCom further recommended that asylum-seekers should have access to assistance 'so that their basic support needs, including food, clothing, accommodation, and medical care, as well as respect for their privacy, are met'.⁹ Reception arrangements should also be gender and age-sensitive and should take into account the specific needs of vulnerable groups.¹⁰

2.1.3. Under European human rights law, this Court has ruled on reception conditions for asylum-seekers multiple times and important principles have been set out in its jurisprudence. In *M.S.S. v. Belgium and Greece*, the Court ruled that Greece had failed to provide decent reception conditions in breach of Article 3 of the European Convention on Human Rights (ECHR), owing to severe overcrowding, poor sanitation conditions and lack of access to the most basic services;¹¹ the fact that the applicant was forced to live in a park and 'allegedly spent months living in a state of the most extreme poverty, unable to cater for his most basic needs: food, hygiene and a place to live';¹² mental distress and insecurity caused by this situation and the 'the ever-present fear of being attacked and robbed', which added to the absence of any prospect of evolution of his situation.¹³ In Article 3 cases, this Court has also attached importance to the efforts made by the State¹⁴ and whether an applicant has a reasonable prospect of seeing his or her situation improve as a result of these efforts.¹⁵ By contrast, where a State was aware of the dire situation of asylum-seekers, but failed to provide adequate reception, the Court has in the past found violations of Article 3 ECHR.¹⁶ In view of the absolute character of Article 3 ECHR, this Court has also held numerous times that difficulties that States may face due to an increasing influx of migrants cannot absolve them of their obligations under that provision.¹⁷

⁸ UNHCR ExCom, *Conclusion on reception of asylum-seekers in the context of individual asylum systems No. 93 (LIII) – 2002*, <https://www.refworld.org/docid/3dafdd344.html>, para. (b)(i).

⁹ *Ibid*, para. (b)(ii).

¹⁰ *Ibid*, para. (b)(iii).

¹¹ European Court of Human Rights ('ECtHR'), *M.S.S. v. Belgium and Greece* (GC), Application No. 30696/0921 January 2011, https://www.refworld.org/cases/ECHR_4d39bc7f2.html, paras. 222-233.

¹² *Ibid*, para. 254.

¹³ *Ibid*, para. 254. See also ECtHR, *N.H. et Autres c. France*, Application No. 28820/13, 2 July 2020, https://www.refworld.org/cases/ECHR_5f0455264.html, para. 164, and previous case law quoted there.

¹⁴ In particular, whether a person finds him or herself 'faced with official indifference in a situation of serious deprivation or want incompatible with human dignity', see ECtHR, *Tarakhel v. Switzerland*, Application No. 29217/12, 4 November 2014, https://www.refworld.org/cases/ECHR_5458abfd4.html, para. 98; *N.H. et Autres c. France*, note 13 above, para. 163.

¹⁵ For example, the Court did not find a violation of Article 3 ECHR in a case of a mother with three young children who were provided with at least night-time accommodation, publicly funded medical care and nursery school for the children, to the extent that their basic needs were met. The Court attached particular importance to the finding that the applicants had a reasonable prospect of seeing their situation improve ECtHR, *N.T.P. et Autres c. France*, Application No. 68862/13, 24 August 2018, [https://hudoc.echr.coe.int/fre#{"itemid":\["001-183130"\]}](https://hudoc.echr.coe.int/fre#{), paras. 45-48. Similarly, regarding asylum-seekers forced to sleep in a tent camp set up on a car park in France, the Court did not find a violation of Article 3 ECHR *inter alia* as it considered that the French authorities had taken measures that had brought about a rapid improvement in their material living conditions, so that their basic needs – housing, food, hygiene, but also medical care and school attendance for children – had all been met. See ECtHR, *B.G. et Autres c. France*, Application No. 63141/13, 10 September 2020, [https://hudoc.echr.coe.int/eng#{"itemid%22:\[%22001-204321%22\]}](https://hudoc.echr.coe.int/eng#{), para. 88.

¹⁶ For example, in a recent decision concerning single men forced to sleep in the streets, under bridges or on river banks in France, the Court found that the French authorities, despite being aware of the applicants' situation, had failed in their duties and were responsible for the conditions in which the applicants had been living for several months: sleeping rough, without any material or financial support, without access to sanitary facilities, no means of subsistence, in constant fear of being attacked or robbed. According to the Court, this had caused feelings of fear, anxiety and inferiority, likely to cause despair, amounting to degrading treatment and a lack of respect for their dignity, in violation of Article 3 ECHR, see *N.H. et Autres c. France*, note 13 above, para. 184. See also *V.M. and others v. Belgium* where the Court found that the Belgian authorities did not duly take account of the vulnerability of the applicants as asylum-seekers or of that of their children and had failed to satisfy their obligation not to expose the applicants to conditions of extreme poverty for four weeks having left them out on the streets with no resources, no access to sanitary facilities, and no means of providing for their essential needs. Such living conditions, combined with the lack of any prospects of their situation improving, had amounted to degrading treatment contrary to Article 3 ECHR. See ECtHR, *V.M. and others v. Belgium*, Application No. 60125/11, 17 November 2016, [https://hudoc.echr.coe.int/eng#{"appidno%22:\[%2260125/11%22\],%22itemid%22:\[%22001-169047%22\]}](https://hudoc.echr.coe.int/eng#{).

¹⁷ While the Court has recognised the difficulties that States at the EU's external border may face, in particular regarding reception, it has held that 'even treatment which is inflicted without the intention of humiliating or degrading the victim, and which stems, for example, from objective difficulties related to a migrant crisis, may entail a violation of Article 3 of the Convention.' See ECtHR, *Khlaifia and Others v. Italy*, Application No. 16483/12, 15 December 2016, [https://hudoc.echr.coe.int/eng#{"itemid%22:\[%22001-170054%22\]}](https://hudoc.echr.coe.int/eng#{), para. 184; ECtHR, *J.R. v. Greece*, Application No. 22696/16, 25 January 2018, [https://hudoc.echr.coe.int/eng#{"itemid%22:\[%22001-180319%22\]}](https://hudoc.echr.coe.int/eng#{), para. 137. See also ECtHR, *S.F. and Others v. Bulgaria*, Application No. 8138/16, 7 December 2017, [https://hudoc.echr.coe.int/eng#{"itemid%22:\[%22001-179231%22\]}](https://hudoc.echr.coe.int/eng#{), para. 92; see also *M.S.S.*, note 11 above, para. 223; ECtHR, *Hirsi v. Italy*, Application No. 27765/09, 23 February 2012, [https://hudoc.echr.coe.int/eng#{"itemid%22:\[%22001-109231%22\]}](https://hudoc.echr.coe.int/eng#{), para. 122.

2.1.4. Further, the European Committee of Social Rights (ECSR) recalled, with regard to migrants in an irregular situation, that '[a]ll persons without resources [...] have a legally recognized right to the satisfaction of basic human material need (food, clothing, shelter) in situations of emergency.'¹⁸ The ECSR also considered that the right to shelter is closely connected to the right to life,¹⁹ and must therefore meet health, safety and hygiene standards.²⁰

2.1.5. Finally, under EU law, European Member States are obliged to ensure an 'adequate standard of living' for asylum applicants 'which guarantees their subsistence and protects their physical and mental health', and they must specifically ensure that this standard is met also in the case of vulnerable persons.²¹ While there is a certain flexibility regarding modalities for material reception conditions, the fundamental rights to dignity and protection of family life must in all cases be protected.²² Member States must also ensure that asylum-seekers receive the necessary health care, and shall provide specific medical or other assistance to vulnerable applicants, including appropriate mental health care.²³ These obligations, in particular the obligation to respect human dignity at all times, have been consistently upheld by the Court of Justice of the EU (CJEU), which has ruled on several occasions that 'asylum seeker may not [...] be deprived – even for a temporary period of time [...] – of the protection of the minimum standards laid down by that [Reception Conditions] directive'.²⁴

2.2. Specific needs consideration for reception and procedures

2.2.1. As this Court has held, asylum-seekers may be generally regarded as particularly vulnerable because of their experiences.²⁵ As such, they are 'member[s] of a particularly underprivileged and vulnerable population group in need of special protection' regarding which there is a 'broad consensus at the international and European level'.²⁶ Specific obligations towards vulnerable asylum-seekers also exist under EU law²⁷, which also requires Member States to assess potential specific reception needs within a reasonable period of time after the application is made, and to ensure support and monitoring throughout the duration of the asylum procedure.²⁸ Asylum-seekers may have a range of specific needs, which may relate to their age, gender, diversity background, experienced trauma, health or other reasons. UNHCR has held that reception conditions should be safe and adequate for all. A vulnerability screening and assessment ensures that specific needs are identified early on to allow for need-specific

¹⁸ ECSR, *Conference of European Churches (CEC) v. the Netherlands (decisions on the merits)*, Complaint No. 90/2013, Council of Europe: European Committee of Social Rights, 10 November 2014, <https://www.refworld.org/cases/COEECSR.54e363534.html>, para. 108.

¹⁹ *Ibid.*, para. 137; ECSR, *Defence for Children International (DCI) v. the Netherlands*, Complaint No. 47/2008, 20 October 2009, <https://www.refworld.org/cases/COEECSR.4b9e37ea2.html>, para. 47.

²⁰ *CEC v. the Netherlands*, note 18 above, para. 138. See also Commissioner for Human Rights of the CoE, 23 January 2020 Comment: The Right to affordable housing: Europe's neglected duty, <https://bit.ly/2FQcNnN>, noting that housing is a human right and states should urgently adopt measures to prevent and eradicate homelessness, in particular among children and other vulnerable groups.

²¹ Article 17(2), European Union: Council of the European Union, Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) (Reception Conditions Directive – RCD), 29 June 2013, OJ L. 180/96, 29.6.2013, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0033&from=EN>.

²² Recitals 9, 11 and 35, Articles 18(2)(a) and 20(5) RCD.

²³ Article 21 RCD.

²⁴ European Court of Justice ('CJEU'), *Cimade and GISTI v. Ministre de l'Intérieur*, C-179/11, 27 September 2012, <http://curia.europa.eu/juris/liste.jsf?language=en&parties=cimade>, para. 56; CJEU, *Federaal agentschap voor de opvang van asielzoekers v Selver Saciri and Others*, C-79/13, 27 February 2014, <http://curia.europa.eu/juris/liste.jsf?language=en&T.F&num=c-79/13>, para. 35; CJEU, *Zubair Haqbin v Federaal Agentschap voor de opvang van asielzoekers*, C-233/18, 12 November 2019, <http://curia.europa.eu/juris/liste.jsf?num=C-233%252F18&language=en>, para. 56. The Court relied on Article 1 EU Charter of Fundamental Rights, according to which human dignity is inviolable and must be respected and protected. This obligation is further reflected in the Recital 35 of the RCD, according to which the directive seeks in particular to ensure full respect for human dignity and has to be implemented accordingly. Respect for human dignity is also at the very heart of the ECHR, and closely linked to the prohibition inhuman or degrading treatment as enshrined in its Article 3, see *N.H. et Autres c. France*, note 13 above, para. 156.

²⁵ *M.S.S.*, note 11 above, para. 232; *N.H. et Autres c. France*, note 13 above, para. 162.

²⁶ *M.S.S.*, note 11 above, para. 251; *Tarakhel v. Switzerland*, note 14 above, para. 118; ECtHR, *A.S. v. Switzerland*, Application No. 39350/13, 30 June 2015, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-155717%22%5D%7D>, para. 29; *N.H. et Autres c. France*, note 13 above, para. 162.

²⁷ Article 21 RCD requires Member States to take into account 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'.

²⁸ Article 22 RCD.

reception conditions for all, including women and children (A). Specific needs can also have procedural implications. In particular, some of these specific need profiles, i.e. unaccompanied children, person with mental disabilities or victims of trauma or trafficking, also require particular procedural considerations and accelerated border procedures would not be suitable for these particular specific need profiles (B).²⁹

A. Particular reception considerations for women and children

2.2.2. UNHCR has long recognised that female asylum-seekers may experience particular problems as a result of their gender and may be vulnerable, particularly if they are not accompanied by family members.³⁰ Women in a situation of vulnerability and children forced to live in dire reception conditions are exposed to on-going protection risks, including sexual exploitation and abuse due to insufficient security, sub-standard or lacking reception sites.³¹ Single women with special security needs should therefore be provided with separate and safe accommodation. In addition, pregnant women should receive the same maternal and child clinic services as nationals, and due consideration should be given to the fact that women in the post-natal period undergo a critical period for the health and survival of the mother and her new-born.³² Furthermore, the Council of Europe Convention on Preventing and Combatting Violence Against Women and Domestic Violence provides for gender sensitive asylum and reception procedures in its Article 60.³³

2.2.3. Particular attention also needs to be paid to the situation of children because of their dependence, vulnerability and developmental needs. Their status of health is directly linked to factors involving food, water, environmental sanitation and shelter, and reception standards should ideally address the special educational, medical, psychological, religious, cultural and recreational needs of asylum-seeking children.³⁴ There is currently a broad consensus that in all decisions concerning children, their best interests must be paramount, including in terms of accessing proper reception and care arrangements.³⁵ Furthermore, the Committee on the Rights of the Child has recalled that ‘states should ensure that children in the context of international migration have a standard of living adequate for their physical, mental, spiritual and moral development’, and that they ‘shall take appropriate measures to assist parents and others responsible for the child to implement this right’, including in informal camps.³⁶ The ECSR has also found that a failure to ensure the special protection of children resulting in overcrowded reception facilities or children living in the streets amounted to a violation of the European Social Charter,³⁷ and has issued urgent interim measures in a case against Greece indicating to the Greek Government ‘to adopt all possible measures with a view to avoiding serious, irreparable injury to the integrity of migrant

²⁹ UNHCR, *Practical considerations for fair and fast border procedures and solidarity in the European Union*, 15 October 2020, <https://www.refworld.org/docid/5f8838974.html> (‘UNHCR practical considerations on border procedures’), p. 3;

³⁰ UNHCR Note on reception, note 7 above, pp. 4-5.

³¹ See *inter alia*, Lanzarote Committee Special report on ‘Protecting children affected by the refugee crisis from sexual exploitation and sexual abuse’, 3 March 2017, <https://bit.ly/35kRrHH>, p. 17.

³² *Ibid.*, Annex, point (g); UNHCR, *UNHCR Comments on the Law on "International Protection and other Provisions" (Greece)*, February 2020 (‘UNHCR Comments on Greek Law, February 2020’), <https://www.refworld.org/docid/5ee3590e4.html>, p. 8.

³³ Council of Europe’s Convention on Preventing and Combatting Violence Against Women and Domestic Violence, ETS No. 210, Istanbul 11/05/2011, <https://bit.ly/2Hn6NUe>. Greece has ratified this Convention.

³⁴ UNHCR, *Refugee Children: Guidelines on Protection and Care*, 1994, <https://www.refworld.org/docid/3ae6b3470.html>, p. 54; UNHCR Note on reception, note 7 above, p. 5.

³⁵ See also UNHCR, *Submission by the Office of the United Nations High Commissioner for Refugees in the case of International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece (Complaint No. 173/2018) before the European Committee of Social Rights*, 9 August 2019, <https://www.refworld.org/docid/5d9745494.html>, para. 3.1.5., referring to *inter alia*, ECtHR, *Rahimi v. Greece*, Application No. 8687/08, 5 April 2011, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%5B%22001-104366%22%7D>, para. 108. The principle of the best interests of the child also cuts across all legal instruments of the Common European Asylum System. Among others, Article 23 RCD, Article 25(6) APD; Article 6 Dublin III Regulation; Article 24 of the Charter of Fundamental Rights of the European Union. This principle was also reaffirmed in the jurisprudence of the CJEU, see, for example, *Haqbin*, C-233/18, note 24 above, para. 54. In particular, Article 23(1) RCD requires that the best interests of the child shall be a primary consideration when implementing the directive, and that Member States shall ensure a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.

³⁶ UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), *Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return*, 16 November 2017, CMW/C/GC/4-CRC/C/GC/23, <https://www.refworld.org/docid/5a12942a2b.html>, paras. 49-50.

³⁷ ECSR, *European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France*, Complaint No. 114/2015, 24 January 2018, <https://www.refworld.org/cases.COEECSR.5b2cc7494.html>, paras. 136-137, and *Defence for Children International (DCI) v. the Netherlands*, note 19 above, para. 64.

minors at immediate risk of life, physical and moral integrity, in particular [...] to ensure access to food, water, education, and appropriate shelter [...].³⁸

B. Procedural safeguards

2.2.4. Adequate reception conditions are an essential precondition to ensure applicants' access to asylum procedures and to guarantee that they can effectively exercise their rights. For example, homelessness affects asylum-seekers' access to procedures where they are required to have an address under national law. It makes it difficult for the authorities to notify the applicant of developments in his or her case, as well as for the asylum-seeker to meet deadlines for important procedural steps, including the filing of an appeal.³⁹ At the same time, adequate procedures, and key guarantees in this regard, are an important element in the assessment of whether reception arrangements are compatible with the ECHR. It is often not merely the inadequate material situation in which applicants find themselves, but also protracted procedures, coupled with lack of essential procedural safeguards such as legal aid, which have led this Court to find violations of the ECHR.⁴⁰

2.2.5. UNHCR considers it to be essential that States effectively integrate vulnerability assessments into their procedures to ensure that specific needs are identified early on and to allow for need-specific reception and particular procedural considerations for some specific need profiles.⁴¹ Based on an initial vulnerability screening, a more holistic assessment shall be carried out by competent personnel (medical/psycho-social) with a view to identify more complex specific needs that bear relevance both for reception standards and for the asylum procedure, such as in the case of unaccompanied children, victims of trauma or trafficking and person with mental disabilities, for whom the use of accelerated procedures in manifestly unfounded cases at the border would not be suitable. They should therefore be exempted from these accelerated border procedures and transferred to the regular procedure, where they may require specific safeguards to ensure they are able to benefit from essential procedural guarantees, including access to legal advice,⁴² adequate timeframes for procedures⁴³ and effective

³⁸ See ECSR's urgent interim measures in the case of ECRE and ICJ v. Greece, <http://hudoc.esc.coe.int/fre/?i=cc-173-2018-dadmissandimmed-en>. See also UNHCR's submission in this case, note **Error! Bookmark not defined.** above, in particular section 3.3.

³⁹ UNHCR, *UNHCR intervention before the European Court of Human Rights in the case of M.S.S. v. Belgium and Greece*, June 2010, <https://www.refworld.org/docid/4c19e7512.html>, para. 3.2.3.

⁴⁰ See, for example, *N.H. et Autres c. France*, note 11 above, where the overlong procedures, which kept applicants in inadequate conditions and led to their despair, were a significant factor in finding a violation of Article 3 ECHR. See also *M.S.S.*, note 11 above, where the Court refers to, *inter alia*, insufficient information, a shortage of interpreters, 'a lack of legal aid effectively depriving the asylum-seekers of legal counsel; and excessively lengthy delays' (para. 301, see also para. 319).

⁴¹ UNHCR practical considerations on border procedures, p. 3; UNHCR RCD Comments 2017, note 3 above, p. 15.

⁴² Legal aid is often an important precondition to enjoy effective access to asylum, and quality legal aid facilitates quality decision making. This is particularly the case in accelerated asylum procedures, which may entail significantly shorter procedural deadlines. UNHCR has recommended that in the case of applicants in need of specific procedural guarantees, access to free legal assistance and representation should be provided systematically, irrespective of the applicant's request: UNHCR, *UNHCR Comments on the European Commission's Proposal for an Asylum Procedures Regulation - COM (2016) 467*, April 2019, ('UNHCR APR Comments'), <https://www.refworld.org/docid/5cb597a27.html>, p. 15. This Court has also held that the lack of legal aid may render rights inaccessible, which may amount to violations of the ECHR where the applicant lacks the practical means of paying a lawyer and receives no information on legal aid: *M.S.S.*, note 11 above, para. 319. Providing for legal assistance in asylum procedures is also a requirement under EU law: Article 20 APD; Article 27(6) Dublin III Regulation; see also CJEU, *Ghezelbash*, C-63/15, 7 June 2016, <http://curia.europa.eu/juris/liste.jsf?language=en&T,F&num=c-63/15>, para. 50.

⁴³ Adequate time frames for procedures, including for appeals, are necessary. In UNHCR's view, efficient border procedures that maintain fairness safeguards and adhere to international and EU law, including the principle of non-refoulement, are possible: UNHCR, *EU Pact on Migration and Asylum: Practical considerations for fair and fast border procedures and solidarity in the European Union*, October 2020, <https://www.refworld.org/pdfid/5f8838974.pdf>. However, a failure by the State to put in place an effective and accessible procedure which allows for asylum requests to be examined within a reasonable time, thus reducing as much as possible the precariousness of asylum-seekers' situation may amount to a violation of the Convention: ECtHR, *B.A.C. v. Greece*, Application No. 11981/15, 13 October 2016, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-167806%22%5D%7D>, para. 46. Positive obligations under Article 8 ECHR 'include the competent authorities' duty to examine the person's asylum request promptly, in order to ensure that his or her situation of insecurity and uncertainty is as short-lived as possible': *BAC v Greece*, para. 37; referring to *M.S.S.*, note 11 above, para. 262. At the same time, time lines may not be shortened to an extent that undermines the fairness and quality of the procedure: UNHCR APR Comments, note **Error! Bookmark not defined.** above, p. 1. While recognizing the importance of speedy remedies, this should not be privileged over the effectiveness of procedural guarantees: ECtHR, *I.M. c. France*, Application No. 9152/09, 2 February 2012, <http://hudoc.echr.coe.int/fre/?i=001-108934>, para. 147. The same has been concluded by the CJEU, which emphasized regarding appeal time limits that 'the period prescribed must be sufficient in practical terms to enable the applicant to prepare and bring an effective action.', see CJEU, *Brahim Samba Diouf v. Ministre du Travail, de l'Emploi et de l'Immigration*, C-69/10, 28 July 2011, <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-69/10>, para. 66. See also UNHCR, *UNHCR Discussion Paper*

remedies, including the requirement for adequate notification of decisions.⁴⁴ This Court also held on several occasions that States should conduct vulnerability assessments and inform persons with specific needs about respective procedures, as otherwise the point of such specific safeguards might be defeated.⁴⁵ Lack of active steps and delays in conducting such assessments may be a factor in raising serious doubts as to the authorities' good faith.⁴⁶

3. The current legislative framework and practice in Greece regarding the reception of asylum-seekers and procedural guarantees within the asylum procedure

3.1. National legal framework related to reception standards and procedural guarantees

3.1.1. The national legal framework⁴⁷ establishes an obligation to provide for material reception conditions that ensure an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health, with due regard to respect for human dignity. This obligation still applies even when accommodation capacity is temporarily exhausted.⁴⁸ Material reception conditions include housing, food and clothing which may be provided in kind or as financial allowances or vouchers, or in a combination of the three, and a daily expenses allowance, while non-material reception conditions include a) access to public health care; b) access to secondary education also for adult applicants; c) access to employment six months following the lodging of the asylum application; and d) vocational training.⁴⁹ Regarding provision of housing in kind, in particular, the law stipulates that authorities shall ensure that appropriate measures are taken to protect privacy and family life. Gender and age-specific concerns as well as potential vulnerabilities⁵⁰ shall be taken into consideration for the referral of applicants to appropriate accommodation facilities and appropriate measures shall be taken to prevent assault and gender-based violence.⁵¹

3.1.2. Regarding procedural guarantees in asylum procedures, the Greek legal framework currently in force⁵² provides for the examination of applications for international protection under regular, accelerated and border

Fair and Fast - Accelerated and Simplified Procedures in the European Union, 25 July 2018, <https://www.refworld.org/docid/5b589cef4.html>, section 4.4.

⁴⁴ The effective notification of decisions to applicants is an essential requirement to guarantee the effectiveness of a legal remedy. Practical problems may arise where national law allows notification to persons other than the applicant (e.g. his/her lawyer, or the Head of the national reception or asylum authority), which may lead to the applicant not being informed of a decision concerning him or her, and therefore failure to lodge an appeal in time: See, for example, UNHCR Comments on Greek Law, February 2020, see note 32 above, p. 20. The CJEU has recently dealt with this issue, ruling that such a 'notification fiction' is compatible with EU law only in narrow circumstances, which require that the applicant has been properly informed and where access to the receiving authority, as well as genuine access to procedural safeguards, including sufficient time in practical terms to prepare an appeal, is ensured: CJEU, *J.P.*, C-651/19, 9 September 2020, <http://curia.europa.eu/juris/liste.jsf?language=nl&num=C-651/19>, in particular para. 57.

⁴⁵ ECtHR, *Abdi Mahamud v. Malta*, Application No. 56796/13, 3 May 2016, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-162424%22%7D>, para. 134, and ECtHR, *Thimothawes v. Belgium*, Application No. 39061/11, 4 April 2017, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-172464%22%7D>, para. 73. With respect to women in the late stages of their pregnancy, see ECtHR, *Mahmundi et Autres v. Greece*, Application No. 14902/10, 31 July 2012, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-112526%22%7D>, para. 70; for individuals with specific health needs, see ECtHR, *Aden Ahmed v. Malta*, Application No. 55352/12, 23 July 2013, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-122894%22%7D>, para. 97; for children and States' obligations under Article 3 ECHR to identify them as such, see ECtHR, *Khan v. France*, Application No. 12267/16, 28 February 2019, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-191587%22%7D>; and ECtHR, *Sh.D. and Others v. Greece and Others*, Application No. 14165/16, 13 June 2019, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-193610%22%7D>.

⁴⁶ *Abdi Mahamud v. Malta*, note 45 above, para. 134; ECtHR, *Abdullahi Elmi and Aweys Abubakar v. Malta*, Application Nos. 25794/13 and 28151/13, 22 November 2016, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-168780%22%7D>, para. 146.

⁴⁷ The Directive 2013/33/EU has been transposed in the national legal framework by L. 4540/2018 (GG A' 91/22.05.2018), applicable until 31.12.2019 and L. 4636/2019 (GG A' 169/01.11.2019), which entered into force since 1.1.2020.

⁴⁸ Article 17 (1) and 18 (5) L. 4540/2018 and 55 (1) and 56 (5) L. 4636/2019.

⁴⁹ Article 1 (g) L. 4540/2018 and Article 41 (b) L. 4636/2019.

⁵⁰ Article 58 (3) L. 4636/2019 foresees that special reception conditions are provided to vulnerable persons straight after the submission of the asylum application. As per article 58 (1) L.4636/2019 and article 39 (5) L. 4636/2019 as amended by article 2 (3) L. 4686/2020 vulnerable persons are minors, unaccompanied or not, direct relatives of shipwreck victims (parents and siblings), disabled persons, elderly people, pregnant women, single parent families with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disability and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence or exploitation, such as victims of female genital mutilation.

⁵¹ Article 18 (2) L. 4540/2018 and Article 56 (2) L. 4636/2019.

⁵² L. 4636/2019 (GG A' 169/1.11.2019) in force after main successive amendments by Laws 4674/2020 (GG A' 53/11.3.2020), 4686/2020 (GG A' 96/12.5.2020 and 4689/2020 (GG A' 96/12.5.2020).

procedures.⁵³ The procedural safeguards that should be applied in all those procedures include a) information provision at all stages; b) personal interview in the context of an individualized assessment of the application; c) provision of interpretation services; d) free legal aid at appeal stage; and e) access to an effective remedy.⁵⁴

3.1.3. Regarding effective remedies, UNHCR has voiced its concerns⁵⁵ regarding, *inter alia*: the introduction in new legislation which entered into force in January 2020 of new means of notification of first instance decisions not guaranteeing effective knowledge of the content of decisions by the applicant; the obligation for personal appearance at the appeal stage regardless of whether a personal interview or participation in a hearing is to occur, the failure of which can lead to the inadmissibility and rejection of the appeal; the obligation of the applicant to provide specific detailed reasons for appeal without full and effective access to free legal aid. Lastly, UNHCR raised concerns on the lack of an automatic suspensive effect for certain categories of appeals, including in the border procedures.⁵⁶

3.2. The current legal framework related to the treatment of asylum-seekers on the islands

3.2.1. Under the national legal framework, new arrivals should be transferred in due time to a Reception and Identification Center (RIC) and be subjected to the reception and identification procedures while being under restriction of liberty for up to 25 days.⁵⁷ The RICs operate under the Reception and Identification Service (RIS), which is the competent authority for the implementation of the reception and identification procedures,⁵⁸ temporary stay of irregular arrivals, as well as further referral to appropriate reception or temporary accommodation structures.⁵⁹ While applicants or other third country nationals reside in RICs, RIS staff must ensure that they enjoy, *inter alia*, dignified living conditions, access to medical assistance, treatment, and psychosocial support, and that persons belonging to vulnerable groups receive appropriate treatment.⁶⁰ Likewise, the General Regulation for the Operation of the RICs⁶¹ provides for the right to enjoy decent living conditions, setting certain standards for services at the RICs.⁶² In particular, accommodation has to be provided in areas with adequate lighting, heating and air-conditioning, along with adequate ventilation and appropriate conditions for vulnerable people. Access to adequate shelter - separate for men, women and people with disabilities - and hygiene facilities must be ensured and RIC residents must be provided with the necessary personal hygiene items, while special reference is made to the hygiene needs of women. Further reference is made to the facilities and infrastructure available at the RICs,⁶³ providing for the supply of potable water, measures for avoidance of floods and stagnant water and waste management. It is particularly noted that decent living conditions are ensured in all accommodation units, and beds and mattresses are provided to each person.

3.2.2. The asylum applications of asylum-seekers subjected to reception and identification procedures may be submitted before the RIS and the asylum-seekers are further referred to the Regional Asylum Offices.⁶⁴ A highly accelerated border asylum procedure applies to asylum-seekers or stateless persons arriving in large numbers and applying for international protection at the border or at airport/port transit zones or while they remain in RICs.⁶⁵

⁵³ Article 83 (1), Article 83 (9) and Article 90 L. 4636/2019.

⁵⁴ Article 69, Article 77, Article 69, and Articles 71, 92seq. L. 4636/2019.

⁵⁵ UNHCR Comments on Greek Law, February 2020, see note 32 above; UNHCR, *UNHCR Comments on the Draft Law "Improvement of Migration Legislation, amendment of provisions of Laws 4636/2019 (A' 169), 4375/2016 (A' 51), 4251/2014 (A' 80) and other Provisions"*, 12 June 2020, <https://www.refworld.org/docid/5ee359cb4.html>; See also UNHCR's intervention at the hearing for actors to the competent Greek Parliament Committee, <https://www.unhcr.org/gr/14521-veltiosi-metanasteutikisnomothesis.html>.

⁵⁶ Article 114 (3) L. 4636/2019. See UNHCR Comments on Greek Law, February 2020, see note **Error! Bookmark not defined.** above, p. 19-20.

⁵⁷ Article 14 L. 4375/2016 and Article 39 L. 4636/2019.

⁵⁸ Reception and identification procedures under L. 4375/2019 (Article 9) include: a. registration of personal data and fingerprinting; b. identification and nationality screening; c. medical screening, care and psycho-social support; d. information about rights and obligations, in particular the asylum procedures and the voluntary return program; e. identification of persons belonging to vulnerable groups, referral to appropriate procedure and provision of specialized care and protection; f. referral of those who wish to submit an application for international protection to the Asylum Service; g. referral of those who do not submit an application for international protection or whose application is rejected while they remain in the RIC to the competent authorities for readmission, removal or return procedures and did not significantly change with L. 4636/2019 (Article 39), applicable as of 1.1.2020.

⁵⁹ Article 8 (2) L. 4375/2016.

⁶⁰ Article 14 (5) L. 4375/2016 and article 39 (8) L. 4636/2019. Moreover, according to article 10 (6-7) L.4375/2016 during their temporary stay in the RICs, vulnerable persons should be hosted in designated safe areas.

⁶¹ JMD 1/7433/15.4.2019 (GG B 2219/10-6-2019).

⁶² Article 23 (1) (a) Article 25seq. and of the General Regulation for the Operation of the RICs.

⁶³ Article 26 of the General Regulation for the Operation of the RICs.

⁶⁴ Articles 9, 36 (3) L. 4375/2016 and articles 39 (6) (a) and 65 (7) L. 4636/2019.

⁶⁵ Article 60 (4) L. 4375/2016 as well as under article 90 (3) L. 4636/2019.

While UNHCR has taken the view that accelerated border procedures are not suitable for certain specific need profiles, i.e. unaccompanied children, persons with mental disabilities and victims of trauma and trafficking, the current legislative framework does no longer provide for such exemption.⁶⁶ As per the current legislative framework, border procedures last up to 28 days from the day of lodging of the application.⁶⁷

3.2.3. For asylum-seekers who entered Greece through the islands of Lesbos, Chios, Samos, Kos, Leros and Rhodes during the period in question, a restriction of movement within each island ('geographical restriction') has been imposed as per the respective regulatory administrative act.⁶⁸ Greek law transposes Article 7 RCD allowing Member States to impose a restriction of movement to asylum-seekers within a specific area assigned to them, provided that it does not affect the unalienable sphere of private life and that allows sufficient scope for guaranteeing access to all benefits under the Directive. Until 31.12.2019, the geographical restriction could be lifted, *inter alia*,⁶⁹ in respect of vulnerable persons. Following amendments to the law, after 1.1.2020, the geographical restriction may *inter alia*⁷⁰ be lifted by a decision of the Manager of the RIC for vulnerable persons or persons in need of special reception conditions if appropriate support may not be provided within the area of restriction,⁷¹ without sufficiently describing what such appropriate support entails.⁷²

3.3. The factual situation on the islands

3.3.1. Different to what is provided by the law, the five RICs on Lesbos, Samos, Chios, Leros and Kos island operate as open registration centers and temporary hosting facilities for asylum-seekers and migrants, including vulnerable persons, for periods longer than the 25 days, on the basis of the '*EU hotspot approach*'.⁷³ The five RICs, which have been expanded formally or informally into neighbouring land, host thousands of asylum-seekers and persons under return procedures, for prolonged periods of time and without fulfilling the prescribed standards.⁷⁴ Asylum-seekers are subject to a geographical restriction.

3.3.2. The official capacity of the RIC on Samos is approximately 648 persons. However, in practice, the center was hosting approximately 4,000 to 7,000 persons during the period between August 2019 and April 2020. In February 2020, more than 7,000 individuals were residing inside and outside the RIC area. Since April 2020 onwards, in view of the low number of new arrivals and the transfers from Samos to the mainland, the overall population of Vathy RIC has decreased. In particular, as of 25 October 2020 the population of Vathy RIC is estimated at 4,260 individuals, which is still almost sevenfold the official/nominal capacity of the site.

⁶⁶ See previous Article 60 para. 4 (f) L. 4375/2016, which L. 4636/2019 abolished. See also, UNHCR practical considerations on border procedures', note 41 above, p. 3.

⁶⁷ Article 90 (3) (c) L. 4636/2019.

⁶⁸ The Ministerial Decision 13411/10.6.2019 (GG B' 2399/19.6.2019) was in force from 19.6.2019 to 31.12.2019 while the Ministerial Decision 1140/2.12.2019 (GG B' 4736/20.12.2019) has been in force since 1.1.2020. The acts are based on Article 7 L. 4540/2019 and Article 45 L. 4636/2019. It is worth noting that both acts mention that the geographical restriction is necessary for the implementation of the EU-Turkey statement.

⁶⁹ In case of persons falling under the family reunification provisions of Articles 8-11 of Dublin Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013, <https://www.refworld.org/docid/51d298f04.html>.

⁷⁰ Except in the case of vulnerable persons and persons in need of special reception conditions the geographical restriction may be lifted in the case of: a. unaccompanied minors; b. persons falling under the family reunification provisions of Articles 8-11 of Dublin Regulation, only after the person is accepted by the concerned member state; and c. persons whose applications for international protection are reasonably considered to be founded.

⁷¹ See Article 67 (2) L. 4636/2019 and Article 2 (d) of the Ministerial Decision 1140/2.12.2019.

⁷² According to article 67 (2) L. 4636/2019, '[w]here applicants have been identified as applicants in need of special procedural guarantees, they shall be provided with adequate support in order to allow them to benefit from the rights and comply with the obligations of this Part throughout the duration of the procedure. Forms of adequate support shall, in particular, consist of additional break times during the personal interview in accordance with Article 77, allowing the applicant to move during the personal interview if this is necessary because of his or her health condition, as well as showing leniency to major inaccuracies and contradictions, where these are related to his/her health condition.'

⁷³ The 'hotspot approach' was first introduced in 2015 by the European Commission in the European Agenda on Migration. Hotspots are envisaged as registration and accommodation centers, where all stages of administrative procedures concerning new arrivals – identification, reception, asylum procedure or return – would take place within their scope.

⁷⁴ As set out, *inter alia*, in the General Regulation for the operation of the RICs. The total official capacity of the five RICs taken together on the islands is 5,400 persons but the number of asylum-seekers hosted in the RICs and the surrounding informally expanded areas, mostly in makeshift shelter and pop-up tents, reached 36,400 in December 2019.

3.3.3. Overcrowding and inadequate services in shelter,⁷⁵ medical and psychosocial support,⁷⁶ hygiene and sanitation,⁷⁷ safety and security, have been permanent characteristics of the situation. Food has been continuously provided by the Greek Army while there has been also a UNHCR-run Emergency Support to Integration and Accommodation ('ESTIA') cash assistance for asylum-seekers (comprising partial amounts to complement the material reception conditions that should be provided), in cooperation with the Greek authorities. Ad hoc support is provided also by NGOs and volunteers outside the RIC, as most were not allowed to operate in the official RIC area. However, living conditions remain significantly substandard. Additionally, various challenges faced by state actors, contribute to the creation of backlogs in procedures (e.g. vulnerability screening, processing of asylum applications) and to delays in the identification and referral of persons with vulnerabilities. Such delays further lead to the prolongation of stay for asylum-seekers under extremely dire living conditions. Limited access to electricity and water and sanitation facilities as well as limited police presence and patrolling, especially at night, leave residents exposed to serious risks. Security incidents including violence, inter-communal tensions,⁷⁸ riots and even operation of criminal groups inside the RIC and the extended areas are repeatedly observed and reported.

3.3.4. In particular for vulnerable persons, their welfare is significantly affected by the limited shelter allocation capacity due to severe overcrowding. There are no designated areas for persons with specific needs such as women at risk, families, persons with serious medical conditions and persons with disabilities, the elderly, or other specific needs.⁷⁹ The state of vulnerable groups under these circumstances further deteriorates by being exposed to increased safety and protection risks such as violence, gender based violence ('GBV'), exploitation, riots and daily security incidents. Women in advanced or high-risk pregnancy live in precarious conditions in tents and unhygienic conditions,⁸⁰ also as a result of the limited alternative accommodation outside the RIC. Upon the completion of her visit to Greece during which she visited *inter alia* the RIC in Samos, the Commissioner for Human Rights of the Council of Europe ('CoE'), reported that she was 'appalled by the unhygienic conditions' concluding that 'this no longer has anything to do with the reception of asylum seekers. This has become a struggle for survival.'⁸¹

⁷⁵ Without shelter allocation assistance provided by RIS, new arrivals established a new makeshift accommodation area outside the RIC in the woods and fields. In September 2019, approximately 85 tents were set up in the forest next to the RIC by some 250 people, mainly Syrians. Lack of access to electricity and WASH facilities in the newly and informal established areas were serious challenges for persons living there. With increasing arrivals, community efforts to build makeshift structures around the RIC continued: pallets, plastic bags, tree branches and trunks, as well as scrap items found in the city were used to build shelters. Pop up tents, tarps, sleeping mats and sleeping bags were provided by NGOs, upon availability. Heavy rainfalls led to flooding in the pop-up tents and makeshift shelters. In early November 2019, according to RIS, 879 persons lived in the RIC containers and dormitories, while 5,353 people lived in tents and other makeshift shelter. Out of those, 2,300 people were staying in pop-up summer tents and makeshift shelters made with plastic and wood outside the official perimeter of the RIC in the woods and olive groves without or with limited access to services.

⁷⁶ EODY, (the Hellenic National Public Health Organization) is the only state medical actor in the RIC, and in August consisted of 1 (one) doctor, one midwife, one nurse and two psychologists. EODY continued to operate with limited resources, as per the EODY update in December 2019: 1 coordinator, 1 general doctor, 3 nurses, 1 midwife, 3 interpreters (2 Arabic, 1 French), 1 psychologist, 2 social workers (source EODY). A total of 12 staff for the provision of services to 6,000-7,000 persons. Médecins Sans Frontières (MSF), a military doctor and volunteer medical actors complemented with limited capacities the provision of primary health services, but they had no role in the official vulnerability screening, a process where significant backlogs of thousands of asylum-seekers were observed in 2019. In August, due to the increase of new arrivals, newly arriving persons were receiving appointments for their first medical screening /vulnerability assessment by EODY approx. 7 ½ weeks away from the date of arrival.

⁷⁷ Water and sanitation facilities were lacking in all the extended areas, while those in the RIC official area were not fully functioning. MSF installed gradually 80 chemical toilets. For nearly 6,500 people hosted in Vathy RIC, in March 2020 there were 155 toilets - 79 within the Vathy RIC and 76 chemical toilets placed in the extended areas by MSF. Within Vathy RIC there were 55 showers many of which did not function properly and had no warm water.

⁷⁸ In October 2019 and in April 2020 serious security incidents took place in the RIC which were also linked to general frustration of the population over inhumane living conditions, prolonged stay under geographical restrictions on the island according to the communities. In October, tensions escalated and led to arson in the fields where several tents and makeshift shelter were burned. Approximately 450 persons residing inside the RIC perimeter, and possibly over 700 persons in total, lost their temporary accommodation and belongings. In April 2020, tensions led to fires of considerable proportions.

⁷⁹ By the end of November, UNHCR estimated that at least 1,500 people with identified specific needs resided on Samos while only 147 (10%) were hosted in UNHCR accommodation. Among an estimated 87 pregnant women resided on Samos, 57 reside in Vathy RIC and only 30 resided in UNHCR accommodation. As of 26 November, 384 UASC were staying on Samos, of whom 373 resided in and around the official perimeter of Vathy RIC, in the woods, in most cases together with adults.

⁸⁰ In November 2019, there were 87 pregnant women resided on Samos, 57 of whom resided in Vathy RIC, while 30 resided in ESTIA accommodation (apartments).

⁸¹ Commissioner for Human Rights of the Council of Europe, *Greece must urgently transfer asylum seekers from the Aegean islands and improve living conditions in reception facilities*, 31 October 2019, <https://bit.ly/3mc4xxI>.

3.3.5. While upon completion of the reception and identification procedures the RIC Manager should refer vulnerable persons to state actors for further support and protection, in practice, such referrals are challenging due to (a) delays in conducting of the vulnerability screening,⁸² (b) delays in the lodging and processing of asylum application (which, before 1.1.2020 could also lead to delays for the lifting of the geographical restriction for vulnerable individuals), (c) lack of social protection solutions and (d) limitations in the capacity of shelters (e.g. for unaccompanied children, GBV survivors, torture survivors etc.) and reception facilities for asylum-seekers. Since the geographical restriction could no longer be lifted after 1.1.2020 for vulnerable individuals, the situation has deteriorated, as the social protection solutions are significantly weaker on the islands. On Samos, the referral pathways for identified vulnerable asylum-seekers are very limited. In principle, there are two main pathways, one being the referral to ESTIA accommodation on the island or the mainland and the other being the RIS led transfers to open temporary reception facilities in the mainland or IOM-run hotels. In total, from August 2019 to April 2020, the RIS on Samos referred 2,179 vulnerable people to UNHCR for ESTIA accommodation. Taking into consideration the ESTIA capacity on Samos (approximately 282 places) and the slow turn over due to the lack of long-term solutions,⁸³ the total number of vulnerable persons and their families who benefited from ESTIA accommodation on Samos during the period August 2019 to April 2020 was 749 persons. With regards to the second referral pathway, that is the RIS- led transfers of asylum-seekers without geographical restrictions to the open reception facilities in the mainland, the numbers also largely depend on the availability of space. Reception needs remain higher than capacity resulting in both accommodation types (ESTIA apartments and open reception facilities) operating at full capacity, with only a limited number of places becoming available and filled on a weekly basis with persons transferred from the islands.⁸⁴ In this context, the application of the geographical restriction in practice constitutes an aggravating factor which, along with delays in the asylum process, has contributed to severe overcrowding and a significant deterioration of the reception conditions on the islands.

3.3.6. Lastly, UNHCR would like to note that the above dire reception conditions, along with the stringent procedural requirements for the asylum-seekers may affect the right for a fair and effective examination of the asylum application, to the extent that it puts into question whether an asylum-seeker could fulfil these procedural requirements under these conditions. The situation was further aggravated after the reformed legislation on asylum procedures entered into force on 1 January 2020. As an example, an applicant's right to an effective remedy has been significantly undermined in practice, *inter alia*⁸⁵ as a) legal aid, which is mandatory at least at the appeal stage, is inadequate to cover all applicants requesting it; b) the deadlines to appeal in the context of the highly accelerated border procedure are extremely tight both under the old and the new legal provisions (5 days under L. 4375/2016 and 10 days under L. 4636/2019); and c) failure to include specific grounds in the appeal may lead to its inadmissibility whereas compliance with this requirement is almost impossible without legal aid and without translation of the reasoning of the 1st instance decision.

4. Conclusion

4.1. In light of all the foregoing, UNHCR submits that the reception conditions in the Vathy RIC in Samos, as well as in the informal settlement area, are at variance with the right to an adequate standard of living and with applicable procedural guarantees as protected by international and European law.

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⁸² In August 2019, due to the increase of new arrivals, newly arriving persons were receiving appointments for their first medical screening / vulnerability assessment by RIS/EODY approximately 7 ½ weeks away from the date of arrival contrary to what is foreseen in law, that is within 3 – 4 weeks upon arrival.

⁸³ The average number of transfers from Samos to ESTIA accommodation in the mainland during the period August 2019 to April 2020 was 41 persons/month (vulnerable persons, incl. families).

⁸⁴ In August 2019 the RIC in Samos had 4,197 persons, another 8,857 arrived in Samos between August 2019 - April 2020, while over the same period, 4,886 were transferred either to ESTIA apartments in Samos (677) or ESTIA apartments and open temporary reception facilities in the mainland (4,129 overall were transferred to the mainland, 3,758 to camps and hotels and 371 to ESTIA). Overall for all the islands, during August 2019 – April 2020 49,439 persons arrived in the Greek islands, while 20,286 were transferred during the same period either to ESTIA apartments within the islands (2,005) or to the mainland, in ESTIA apartments and open reception facilities (18,281).

⁸⁵ After 1.1.2020, applicants have also to request a certificate by the RIC Manager and submit to the Appeals' Authority that proves they are residents of the RIC which is not always possible to occur in these overcrowded facilities. UNHCR has been aware of cases where the applicants could not fulfil this requirement within the strict deadline foreseen by the law which led to an implicit withdrawal and thus rejection of the appeal.