

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

DECISION ON THE MERITS

Adoption: 26 January 2021

Notification: 11 March 2021

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**International Commission of Jurists (ICJ) and European Council for Refugees
and Exiles (ECRE) v. Greece**

Complaint No. 173/2018

The European Committee of Social Rights, a committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 318th session, in the following composition:

Giuseppe PALMISANO, President
Karin LUKAS, Vice-President
Eliane CHEMLA, General Rapporteur
József HAJDU
Barbara KRESAL
Kristine DUPATE
Aoife NOLAN
Karin Møhl LARSEN
Yusuf BALCI
Ekaterina TORKUNOVA
Tatiana PUIU

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

Having deliberated on 10 December 2020 and 26 January 2021,

On the basis of the report presented by Aoife NOLAN,

Delivers the following decision adopted on this latter date:

PROCEDURE

1. The complaint lodged by the International Commission of Jurists (ICJ) and the European Council for Refugees and Exiles (ECRE) was registered on 30 November 2018.

2. ICJ and ECRE allege that serious systemic flaws in Greek law, policy and practice deprive unaccompanied migrant children in Greece (both on the mainland and on the Greek Aegean islands of Lesbos, Kos, Samos, Chios and Leros, “the Greek islands” or “the islands”) and accompanied migrant children on the Greek islands of the rights to housing, health, social and medical assistance, education, and social, legal and economic protection under the European Social Charter (“the Charter”). The complainant organisations allege that said flaws result in a violation of Articles 31§§ 1 and 2 (right to housing), 17§1 (right of children and young persons to social, legal and economic protection), 16 (right of the family to social, legal and economic protection), 7§10 (right of children and young persons to protection), 11§§1 and 3 (right to protection of health), 13 (right to social and medical assistance) and 17§2 (right of children and young persons to education). The complainant organisations made a request for immediate measures in accordance with Rule 36 of the Rules.

3. On 23 May 2019, the Committee declared the complaint admissible, in accordance with Article 6 of the Additional Protocol to the European Social Charter providing for a system of collective complaints (“the Protocol”). It also decided that it was necessary to indicate to the Government, in accordance with Rule 36 of the Rules of the Committee (“the Rules”), immediate measures which should be adopted with a view to avoiding serious, irreparable injury to the integrity of migrant children at immediate risk.

4. In its decision on admissibility, the Committee invited the Government to make written submissions on the merits of the complaint by 31 July 2019.

5. Pursuant to Article 7§§1, 2 of the Protocol and Rule 32§§1, 2 of its Rules, the Committee invited the States Parties to the Protocol, the States having made a declaration in accordance with Article D§2 of the Charter, and the international organisations of employers or trade unions referred to in Article 27§2 of the Charter, to submit observations, if they so wished, on the merits of the complaint by 31 July 2019.

6. Observations by the European Trade Union Confederation (“ETUC”) were registered on 30 July 2019.

7. In accordance with Rule 32A§1 of the Rules, the President of the Committee invited the United Nations High Commissioner for Refugees (“UNHCR”) to submit written observations on this complaint by 23 August 2019. These observations were registered on 9 August 2019.

8. In accordance with Rule 28§3 of the Rules, the President of the Committee invited the Government and the complainant organisations, if they so wished, to make a response to the observations submitted by the ETUC and by the UNHCR by 4 October 2019. No responses were received.

9. On 4 July 2019, the Government asked for an extension to the deadline for submitting its submissions on the merits. The President of the Committee extended this deadline until 13 September 2019. The Government’s submissions on the merits were registered on 13 September 2019.

10. Pursuant to Rule 31§2 of the Rules, the deadline set for the response of the complainant organisations to the Government’s submissions on the merits of the complaint was 29 November 2019. The response was registered on 28 November 2019.

11. Pursuant to Rule 31§3 of the Rules, the Government was invited to submit a further response by 31 January 2020. On 21 January 2020, the Government asked for an extension to the deadline for submitting its further response. The President of the Committee extended this deadline until 21 February 2020. The Government’s further response was registered on 21 February 2020.

SUBMISSIONS OF THE PARTIES

A – The complainant organisations

12. ICJ and ECRE invite the Committee to find that Greece fails to fulfil its obligations under the Charter with regard to unaccompanied migrant children in Greece (both on the mainland and islands) and accompanied migrant children on the islands, in breach of Articles 31§§1 and 2, 17§1, 16, 7§10, 11§§1 and 3, 13 and 17§2 of the Charter, in particular due to:

- the failure to prevent homelessness and provide shelter for migrant children (both accompanied and unaccompanied on the islands, and unaccompanied children on the mainland) in conditions compatible with human dignity, as a result of the insufficient number of age-appropriate reception and accommodation facilities ;
- the failure to provide accompanied migrant children (on the islands) with the special care and assistance they require and unaccompanied migrant children (both on the mainland and the islands) with the protection and special aid that they need, *inter alia*, by not providing sufficient and adequate services to ensure their care and to protect them from negligence, violence and exploitation

(including the lack of an effective guardianship system, as well as the detention of children in terms of the “protective custody” system)

- the failure to provide accommodation as a means of securing the social, legal and economic protection of the family unit, in order to safeguard the well-being and the full development of the child as a member of the family (in respect of accompanied migrant children on the islands and as a result of an insufficient number of appropriate reception places);
- the exposure of migrant children (both accompanied and unaccompanied on the islands, and unaccompanied children on the mainland) to very serious physical and moral hazards, thereby causing a serious threat to their life, psychological and physical integrity and to their human dignity (as a result, *inter alia*, of inappropriate reception/accommodation conditions, lack of effective guardianship system and detention under “protective custody” in respect of unaccompanied children);
- the failure to take steps to facilitate access to health care and services, to address the causes of ill-health and to prevent diseases and the worsening of illnesses among migrant children (both accompanied and unaccompanied on the islands, and unaccompanied children on the mainland), as a result of inappropriate reception/accommodation conditions, limited provision of healthcare, including psychological support, and insufficient number of medical personnel);
- the failure to provide material, social and medical assistance necessary for migrant children (both accompanied and unaccompanied on the islands, and unaccompanied children on the mainland), which includes medical and psychological care, an effective guardianship system and provision of shelter and other basic needs (food);
- the failure to provide migrant children on the Greek islands (both accompanied and unaccompanied) with access to free primary and secondary education and to encourage regular attendance at schools.

B – The respondent Government

13. The Government states that the situation it has been confronted with due to the increased migration flows is exceptional, unprecedented, extreme, and also creates circumstances/conditions that often exceed the carrying capacity of the islands of the North Aegean Sea. It asks the Committee to take into account the extraordinary nature of the situation as well as the fact that the process of adopting new measures and legislation in order to facilitate and speed up the procedure for granting international protection is still ongoing. The Government further asks the Committee to consider all relevant actors that should contribute towards remedying the situation and to recognise the efforts of Greece to address this unprecedented humanitarian crisis.

14. The Government accordingly requests the Committee to find the complaint unfounded.

OBSERVATIONS BY THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (“UNHCR”)

15. UNHCR in its observations addresses the domestic legislative framework and practice in Greece regarding reception conditions for children seeking international protection and the guardianship system for unaccompanied and separated children. It also provides its interpretation of the relevant principles of international refugee and human rights law governing the reception of children seeking protection.

16. With regard to the practice in Greece, UNHCR indicates that only 26% of unaccompanied children are in long term care (i.e. NGO-run shelters or semi-independent living (“SIL”) projects), while 25% reside in interim/temporary accommodation such as the Safe Zones in open temporary accommodation centres or IOM-run hotels on the mainland. The remaining children are either in the reception and identification centres (“RICs”) on the islands (18%) or in “protective custody” in police detention facilities (4%). A significant number of UAC (27%) are homeless or living in informal/insecure housing such as in apartments with others, in squats or move frequently between different types of accommodation.

17. Although the situation for unaccompanied children in the RICs varies, the accommodation conditions are largely sub-standard due to shortcomings in available services. Despite the establishment of Safe Zones in some of the RICs (Lesvos and Chios) and designated areas for these children, the needs exceed the available services. As of 30 June 2019, there were 765 unaccompanied children in the RICs, 625 of them in the RICs on the islands (Lesvos, Chios, Samos, Kos and Leros) and 140 in the Fylakio RIC at the Evros land border. The official capacity of the Safe Zones in the RICs according to IOM is 70 places in Chios and 65 in Lesvos. Transfers from the RICs to shelters for unaccompanied children are usually delayed due to a number of factors (i.e. delays in the medical and psychosocial assessment, delays in the age assessment procedures, lack of coordination). According to UNCHR reports, the care and protection situation in those RICs for these children is seriously sub-standard, with the worst conditions prevailing in the RICs of Samos and Lesvos. In Samos, as of 30 June 2019, there were 112 children living in the RIC, including 101 unaccompanied children, of whom ten were girls who were sharing one 4x3 m² container and who had to be escorted by the police to go to the toilet. In Lesvos, as of 30 June 2019, 354 children seeking protection resided in various areas of the Moria reception centre including the temporary arrivals’ hall (“Rubb Hall” with 52 children among 290 adults)

and the safe zone (66 children). As an indication of the lack of security in the “Rubb Hall”, it was reported in February 2018 that forty unaccompanied children were missing from the hall and criminal proceedings were initiated thereafter. The Fylakio RIC in Evros operates as a closed facility (in contrast with the 5 RICs on the islands) for registration purposes for up to 25 days, and often has an average of 100 to 140 unaccompanied children staying under “protective custody” beyond the 25 days and up to 3-5 months. During this period, the children are restricted in a facility without adequate medical and psychosocial services and without access to recreational and educational activities. Due to overcrowding, they stay together with families and adults.

18. Therefore, UNHCR considers that the situation in the RICs undermines the rights of unaccompanied children. The exposure of children to such sub-standard conditions and overcrowding increases their vulnerability and impact on their psychosocial well-being.

19. The reception of unaccompanied children in mainland Greece following their transfer from RICs or from police “protective custody” is in shelters, Safe Zones in open accommodation centres, hotels run by IOM, SIL schemes or family-based care. Although progress has been noted clarifying the institutional framework (i.e. EKKA acting as the responsible agency for the provision of quality services and supervision according to Law 4554/2018) and in the development of new, more holistic, models of care arrangements, the ongoing deficiencies in the number, type and quality of care arrangements available for unaccompanied children in the mainland has remained a serious gap for the last four years. With regard to shelters, there are currently 48 with a total of 1,125 places available.

20. The lack of harmonized standards for the operation and quality assurance of the services provided in the shelters has been a longstanding concern of UNCHR. For the unaccompanied children who are fortunate to be placed in the shelters, the psychosocial impact of the predominantly institutional care model in Greece on children with heightened emotional and psychological needs should not be underestimated. For many adolescents, this form of care does not correspond to their age, developmental stage or culture.

21. There are 10 open accommodation sites on the mainland run by IOM and/or its partners and funded by the European Commission, all of which have Safe Zones (each Safe Zone accommodates a maximum of 30 unaccompanied children). There are also 17 hotels run by IOM and/or its partners with a capacity of 660 places, funded by the European Commission since January 2018. Although initially envisaged as temporary arrangements, these hotels have slowly become in 2018 and 2019 a standard part of the shelter solutions for such children. In addition, there are 10 SIL apartments for unaccompanied children older than 16 years old with a total of 40 places. In this

regard, UNCHR and UNICEF work with the Greek authorities on improving the effectiveness in the identification and referral of eligible children to this scheme and for the reinforcement of safeguards. Finally, there are 25 registered families in a project implemented by UNCHR and the NGO METAdrasi for hosting unaccompanied children, funded by the European Commission. This project has remained small due to funding constraints and challenges in the existing legislative framework, but in the UNCHR's view, it remains an important and innovative example of individualized care.

22. In relation to the detention of children seeking asylum, UNHCR observes that the vast majority of children seeking asylum being held in detention in Greece are detained for the purpose of their referral to an appropriate reception facility. This is so irrespective of the legal basis under which the unaccompanied children is detained and even in cases where the Public Prosecutor has not specifically issued a decision on "protective custody". Pending this referral, children can be detained in police stations or pre-removal detention centres, or even in closed sections in the RICs where they have been transferred. UNCHR has observed that the conditions in pre-removal detention centres and police stations are frequently poor due to overcrowding, insufficient maintenance, lack of hygiene and medical services. UNCHR submits that during 2018 there was an increase in the number of children seeking asylum detained for prolonged periods (with a peak of 216 children detained on 15 June 2018). The number has been further increasing since April 2019 with more than 100 staying in police stations for approximately two weeks. The detention of children in such conditions is primarily due to a lack of appropriate reception capacity but also an absence of adequate safeguards in the Greek legal framework, such as a lack of time limitation, and the fact that "protective custody" for immigration-related purposes is allowed by law. UNCHR's position is that children should not be detained for immigration-related purposes, irrespective of their legal/migratory status or that of their parents, and detention is never in their best interests. Instead, appropriate care arrangements and alternatives to detention need to be in place, preferably through family-based alternative care options or other suitable alternative care arrangements.

23. With respect to the guardianship system, UNCHR submits that in practice Public Prosecutors very rarely take cases to court for a permanent guardian to be designated. As a result Public Prosecutors remain the temporary guardians of a high number of children seeking asylum, in respect of whom they do not have the capacity to act. Furthermore, different practices have been observed across Greece, such as the Public Prosecutor remaining as guardian and not temporarily or the Court appointing a guardian without conducting an assessment regarding appropriateness. Since January 2019 and in view of the application of the new legal framework (Law 4554/2018, which largely reflected UNCHR's proposals and positions presented to the Parliament) as of September 2019, UNHCR is working with the Ministry of Labour/EKKA and METAdrasi, with a tripartite agreement, to temporarily pilot the implementation of the Guardianship Law.

24. Finally, UNCHR refers to the principles of international refugee and European human rights law regarding the reception of children and the best interests of the child.

25. UNCHR concludes that, notwithstanding a number of positive developments and efforts in Greece and in particular the adoption of new legislation in the area of guardianship, significant gaps continue to exist. In the UNCHR's view, providing child-appropriate reception conditions is an essential component in ensuring that children can effectively access asylum procedures while safeguarding their dignity.

OBSERVATIONS BY THE EUROPEAN TRADE UNION CONFEDERATION

26. The European Trade Union Confederation (ETUC) refers in its observations to various international law materials, including the ILO Worst Forms of Child Labour Convention of 1999 (No. 182), EU law and the case-law of the European Court of Human Rights. In particular, it refers to two recent judgments in which the European Court found that Greece had breached Article 3 of the European Convention on Human Rights ("ECHR") in respect of the conditions of detention and/or living conditions of unaccompanied migrant children (*H.A. and Others v. Greece*, Application No. 19951/16, Judgment of 28 February 2019; *Case of Sh.D. and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia*, Application No. 14165/16, Judgment of 13 June 2019). Although in the first judgment the Court did not reach the conclusion that the living conditions in the Diavata reception centre (near Thessaloniki) amounted to inhuman or degrading treatment, the ETUC considers that the Charter offers a much higher level of protection in several aspects than Article 3 of the ECHR.

27. The ETUC supports the arguments of the complainant organisations in relation to the violation of all the Articles of the Charter invoked in the complaint. In relation to Article 31, it notes that the Greek Government itself, in its most recent report submitted to the United Nations Committee on the Rights of the Child (21 December 2018), admits that appropriate shelters for UAC in Greece are still not enough as they cover only about one third of existing need.

RELEVANT DOMESTIC LAW AND PRACTICE

1. Law relating to the procedures for those newly arrived to Greece and the asylum procedure: Law 4375/2016

28. Law 4375/2016 provides a comprehensive legal framework that regulates, *inter alia*, the procedures to be followed in the case of newly arrived third country nationals in Greece (the full text of Law 4375/2016 can be found in English at: <https://bit.ly/2PhNKtr>). Reception and identification provisions, as well as asylum procedures, are all included in this legislation that amended most of the previous asylum-related laws.

29. Under Part A, Chapter B, Articles 8-17 establish the new Reception and Identification Service (RIS) and specify the content of reception and identification procedures for new arrivals, along with relevant exceptions and safeguards. Among these, Article 9 provides a detailed description of the different reception and identification procedures, marking the first mention of the need to distinguish groups with specific needs from the general newly-arrived population.

“Part A

[...]

Chapter B

[...]

Article 9

Reception and identification procedures

1. All third-country nationals and stateless persons who enter without complying with the legal formalities in the country shall be submitted to reception and identification procedures. Reception and identification procedures include:

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

2. Third-country nationals or stateless persons residing in Greece without complying with the legal formalities, and whose nationality or identity cannot be certified by a public authority document shall also be submitted to reception and identification procedures.

30. After highlighting the special status of groups with specific needs, the law delineates the status of residence of newly arrived people in the Reception and Identification Centres (RIC) in Article 14, further elaborating on the concept of vulnerability and the obligations it entails. In this context, paragraph 8 serves as a general guidance regarding the identification and handling of vulnerable cases, including families and unaccompanied minors:

[...]

Article 14

Status of residence and procedures in the Reception and Identification Centres and in Mobile Units

1. Third-country nationals or stateless persons entering without complying with the legal formalities in the country shall be directly led, under the responsibility of the police or port authorities dealing in accordance with the relevant provisions, to a Reception and identification Centre. [...]

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. Alternatively, the Manager of the Reception and identification Centre at the border, may, due to urgent needs caused by an increase in arrivals or in order to adequately complete these procedures, in particular in the case of persons belonging to vulnerable groups, may, by a decision, refer the third-country national or stateless person to a Reception and identification Centre located inland or to other appropriate structures in order to continue and complete the reception and identification procedure. [...]. In the context of such procedures, special care shall be given to the provisions of paragraph 8, concerning persons belonging to vulnerable groups, in particular unaccompanied minors.

3. Restriction of liberty shall entail the prohibition to leave the Centre and the obligation to remain in it, in accordance with the provisions and conditions laid down in its Rules of Procedure; residents shall be informed of the content thereof in a language they understand. By way of exception, such as for reasons of health of a resident in the Centre or of a relative of his/her, the Manager may grant a temporary permission to leave these facilities.

4. The decision to extend the restriction of liberty in order to complete the reception and identification procedures shall contain the reasoning, in fact and in law, and shall be in writing. [...].

5. In any event, throughout the reception and identification procedures, the Manager and the staff of the Centre shall, in accordance with the procedure laid down on each case, ensure that that the third-country nationals or stateless persons: a) live under decent living conditions, b) maintain their family unity, c) have access to emergency health care and essential treatment of illness or psychosocial support, d) receive, if they belong to vulnerable groups, the appropriate treatment for each case, e) are adequately informed of their rights and obligations; f) have access to guidance and legal advice and assistance on their situation, g) keep contact with civil society groups and organizations active in the area of migration and human rights and providing legal or social assistance, and h) have the right to contact their family and close persons. [...]

7. The information unit or the Reception and identification Centre shall inform third country nationals or stateless persons of their rights and obligations as well as of the procedures to receive international protection status and the procedures for voluntary repatriation. Applicants for international protection shall be referred to the competent Regional Asylum Office, a unit of which may operate inside the Centre. At any stage of the proceedings, the request for international protection shall entail the separation of the applicant from the remaining persons in the Centre, if this is feasible, and his/her referral to the appropriate procedures and/or reception facilities. Receipt of applications and interviews of applicants may be carried out within the premises of the Centre, in a place that ensures confidentiality. Applicants for international protection may remain in the premises for the duration of the application examination procedure, up to a period of twenty-five days from their arrival at the centre. If, after the expiry of that period, the examination of the application is not completed, the competent Regional Asylum Office shall issue the applicant the relevant card for applicants for international protection in application of the provisions in part three of this law. Subsequently, the applicant shall be referred by the Reception and identification Centre to the appropriate reception structures. If the application and any appeal lodged are rejected while the applicant remains in the Reception and Identification Centre, s/he shall be referred to the competent authority in view of his/her return, readmission or removal procedures.

8. The Manager of the Centre or the Unit, acting on a proposal of the Head of the medical screening and psychosocial support unit shall refer persons belonging to vulnerable groups to the competent social support and protection institution. A copy of the medical screening and psychosocial support file shall be sent to the Head of the Open Temporary Reception or Accommodation Structure or competent social support and protection institution, as per case, where the person is being referred to. In all cases the continuity of the medical treatment followed shall be ensured, where necessary. As vulnerable groups shall be considered for the purposes of this law: a) Unaccompanied minors, b) Persons who have a disability or suffering from an incurable or serious illness, c) The elderly, d) Women in pregnancy or having recently given birth, e) Single parents with minor children, f) Victims of torture, rape or other serious forms of psychological, physical or sexual violence or exploitation, persons with a post-traumatic disorder, in particularly survivors and relatives of victims of ship-wrecks, g) Victims of trafficking in human beings.

Persons belonging to vulnerable groups can remain in Reception and identification Centres in special areas until completion of the procedures laid down in Article 9, without prejudice to the deadlines set out in paragraph 2 above. Reception and Identification Services shall take special care to cater for the particular needs and the referral of families with children under the age of 14, especially infants and babies.

[...]

10. Upon the completion of the reception and identification procedures, third-country nationals or stateless persons who do not fall under the provisions of international protection or other forms of protection and who possess no legal residence title in Greece, shall be referred, by decision of the Manager of the Centre, to the competent police authority for the return, readmission or expulsion procedures, in accordance with the relevant provisions.

11. The provisions of this Article shall apply, mutatis mutandis, to Reception and Identification Mobile Units.

[...]

31. Part C deals with the procedures for granting and withdrawing international protection status and transposition into Greek legislation of the directive 2013/32/EU of the European Parliament and the Council on "common procedures for granting and withdrawing international protection (recast)" (L 180/29.6.2013)

Article 33

(Article 1 of the Directive)

Purpose

The purpose of this part is to transpose into Greek legislation Council Directive 2013/32/EU of the European Parliament and the Council (recast) "on common procedures for granting and withdrawing international protection status" (L 180/29.6.2013).

Article 34

(Articles 2 and 4 of the Directive)

Definitions

[...]

d. "Applicant for international protection" or "applicant for asylum" or "applicant" is the alien or stateless person, who declares orally or in writing before any Greek authority, at entry points of the Greek State or inland, that s/he is asking for asylum or subsidiary protection, or asks, in any form, not to be expelled to a country for fear of prosecution due to race, religion, nationality, political opinion or membership to a particular social group, in accordance with the Geneva

Convention, or because he is at risk of suffering serious harm in accordance with Article 15 of Presidential Decree 141/2013 (A' 226) and on whose application no final decision has yet been reached.

[...]

k. "Unaccompanied minor" is a person below the age of 18, who arrives in Greece unaccompanied by an adult who exercises parental care on him/her according to Greek Legislation and for as long as such parental care has not been assigned by law and exercised in practice, or a minor who is left unaccompanied after he/she has entered Greece.

l. "Representative of an unaccompanied minor" is the temporary or permanent guardian of the minor or the person appointed by the competent Public Prosecutor for Minors or, in the absence of the latter, by the First Instance Public Prosecutor to ensure the minor's best interests. The task of the representative, as defined in the previous sentence, can be assigned to the legal representation of a non-profit making legal entity. In the latter case, the representative of that legal entity may authorize another person to represent the minor, in accordance with the provisions of the present law.

[...]

y. "Applicants in need of special procedural guarantees" are applicants whose ability to benefit from the rights and comply with the obligations provided for in this Part is limited due to individual circumstances related to their personal situation, such as their health condition.

Article 36

(Articles 6 and 7 of the Directive)

Access to the procedure

a. Any alien or stateless person has the right to apply for international protection. The application is submitted before the competent receiving authorities, which shall immediately proceed to register it fully. Full registration shall include at least the applicant's identity, his/her country of origin, the names of his/her father, mother, spouse and children, as well as biometric identification data and a brief reference to the reasons for which the applicant requests international protection.

[...]

3. [...] The person who expresses his/her intention to submit an application for international protection is an asylum applicant, in accordance with the provisions of Article 34 point (d) of the present law.

[...]

6. The applicant may submit an application on behalf of his/her family members. In such cases, the adult members having legal capacity must consent in writing to the lodging of the application on their behalf, or otherwise have the opportunity to submit an application on their own. [...].

7. An applicant, who bears a child after his/her entry in the country, may submit an application on behalf of the child; the application must be accompanied by the child's birth certificate. This application is consolidated with the application of the parent applicant at any stage and instance of the procedure this may be.

8. A minor above 15 years of age, can lodge an application, independently and in person. In case he/she is unaccompanied, the provisions of Article 45 of the present law shall apply.

9. An unaccompanied minor, under 15 years of age, lodges an application through a representative, as defined in Article 45 of the present law.

10. The representative of the minor, as well as the representative of the accommodation centre that hosts the minor, in accordance with Article 19 of the Presidential Decree 220/2007, may submit an application for international protection on the minor's behalf, as long as, on the basis of an individual assessment of the personal circumstances, they consider that the minor might have the need of international protection. The minor must be present during the lodging of the application, unless this is not possible due to force majeure.

Article 37

(Article 9 of the Directive)

Right of the applicants to remain – Exceptions

1. Applicants shall be allowed to remain in the country until the conclusion of the administrative procedure for the examination of their application and they shall not be removed in any way.
[...]

Article 45

(Article 25 of the Directive)

Applications of unaccompanied minors

1. When an unaccompanied minor lodges an application, the competent authorities shall take action according to par. 1 of Article 19 of P.D. 220/2007 in order to appoint a guardian for the minor. The minor is immediately informed about the identity of the guardian. The guardian represents the minor, ensures that his/her rights are safeguarded during the asylum procedure and that he/she receives adequate legal assistance and representation before the competent authorities. The guardian or the person exercising a particular guardianship act shall ensure that the unaccompanied minor is duly informed in a timely and adequate manner especially of the meaning and possible consequences of the personal interview, as well as how to be prepared for it. The guardian or the person exercising a particular guardianship act is invited and may attend the minor's interview and may submit questions or make observations to facilitate the procedure. During the personal interview, the presence of the unaccompanied minor may be considered necessary, despite the presence of the guardian or the person exercising a particular guardianship act.

2. The case-handlers who conduct interviews with unaccompanied minors and take relevant decisions shall have the necessary knowledge regarding the special needs of the minors and must conduct the interview in such a way as to make it fully understandable by the applicant, taking in particular account of his/her age.

3. If the guardian or the person exercising a particular guardianship act is a lawyer, the applicant cannot be the beneficiary of free legal assistance, pursuant to Article 44 paragraph 3, first indent.

[...]

7. Applications for international protection of unaccompanied minors shall always be examined under the regular procedure.

8. Ensuring the child's best interest shall be a primary obligation when implementing the provisions of this Article.

[...]

Article 60

(Article 47 of the Directive)

Border procedures

[...]

4. In case of third country nationals 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 Reception and Identification Centres, the following procedures shall exceptionally apply, following a relevant Joint Decision by the Minister of Interior and Administrative Reconstruction and the Minister of National Defence:

(a) The registration of applications for international protection, the notification of decisions and other procedure-related documents as well as the receiving of appeals may be conducted by staff of the Hellenic Police or the Armed Forces.

(b) In the implementation of procedures under (a) above, the Asylum Service may be assisted, in the conduct of interviews with applicants for international protection as well as any other procedure, by staff and interpreters deployed by the European Asylum Support Office.

(...)

(d) Decisions on applications for international protection shall be issued, at the latest, the day following the day the interview is conducted and shall be notified to the individuals concerned, at the latest, the day following the day of issuance.

(e) Appeals shall be examined within three (3) days from their submission. Decisions on appeals shall be issued, at the latest, two (2) days following the day of the appeal examination or the submission of a memorandum and shall be notified to the individuals concerned, at the latest, the day following the day of their issuance. When the applicant requests to be granted an oral

hearing, as per Article 62, paragraph 1 (e) below, the Appeals Committee may, according to its judgement, invite or not the applicant to a hearing.

(f) Individuals falling under Articles 8 to 11 of EU Regulation 604/2013 of the Parliament and the Council as well as vulnerable persons under Article 14 paragraph 8 of this law shall be exempted from the procedures described above.

32. In summary, children are entitled to special care and attention in the context of asylum procedures in Greece, as stipulated in the aforementioned provisions. The law imposes an obligation on all relevant actors to consider the exceptional vulnerability of this particular group through all stages of the asylum procedure, ensuring the best interest of the child is upheld at all instances.

33. The general procedures regarding the lodging of applications for international protection by minors are laid out in Article 36, while Article 45 focuses on the specific issue of applications by unaccompanied minors. In this case, the immediate appointment of a guardian is required, in order to provide assistance to the child throughout the entire procedure. The same Article provides a general guidance on age determination procedures, with the guardian again playing a central role in informing and safeguarding the child's interests (see below, under 3. *Guarantees for children*).

2. Law relating to reception, detention and restriction of movement

Law 4540/2018

34. The recast Reception Conditions Directive (Directive 2013/33/EU) was transposed by L. 4540/2018 on May 2018 (available, in Greek, at: <https://bit.ly/2L0EpTI>).

35. According to Article 2 e) of Law 4540/2018 an unaccompanied child is a minor who arrives in Greece without being accompanied by a person who, according to Greek law, exercises parental responsibility or custody, or without being accompanied by an adult relative, who in practice is responsible for the child's care, for as long the exercise of such tasks is not assigned to another person, according to the law. This definition also includes the minor who stops being accompanied after his/her entry in Greece.

36. According to Article 2 g), 'material reception conditions' means the reception conditions that include housing, food and clothing provided in kind or as financial allowances or in vouchers, or a combination of the three, and a daily expenses allowance.

37. According to Article 2 j), 'representative of unaccompanied minor' means the temporary or permanent guardian of the minor or a person appointed by the competent Public Prosecutor for Minors and, where there is no Public Prosecutor for Minors, by the Public Prosecutor at the Court of First Instance, for the purpose of protecting the minor's interests. The legal representative of a non-profit legal entity may also be appointed as representative under the above paragraph.

38. According to Article 3 d), ‘minor separated from his or her family’ or ‘separated minor’ means a minor who arrives on the Greek territory unaccompanied by a person exercising parental responsibility over the minor under the Greek legislation or by any other person entrusted with parental responsibility over the minor under law, but who is accompanied by an adult relative who effectively takes care of the minor.

39. Article 7 refers to “Residence and freedom of movement” of applicants for international protection, setting out a basic framework for the restriction of movement, including principles and reasons thereof, as well as the consequences of its violation.

Article 7
Residence and freedom of movement
(Article 6 of Directive 2013/33/EU)

1. Applicants may move freely within the Greek territory or within an area assigned to them by means of a regulatory decision issued by the Director of the Asylum Service. The restriction of free movement within a designated geographical area shall not affect the unalienable sphere of private life and shall not prevent the exercise of the rights provided for hereunder.

2. Decisions to restrict free movement shall be made, when necessary, for the swift processing and effective monitoring of applications for international protection or for duly justified reasons of public interest or public order. Any such restrictions shall be stated in the international protection applicant cards.

3. Applicants subject to restrictions of free movement as above shall be offered material reception conditions within the geographical area designated in the restriction decision. In case the terms and conditions provided for in the relevant decision are breached by the applicant, material reception conditions shall be withdrawn. (...)

40. Article 9 amends Art. 46 (10) of L. 4375/2016 and designates the minimum conditions of detention, focusing on information provision and access of medical, legal (legal advisors, or counsellors, representatives) and social actors to detainees.

41. Article 10 added an additional paragraph to Art. 46 (10) of L. 4375/2016, titled “10A”. This new paragraph is exclusively dedicated to the detention of vulnerable persons, which was previously incorporated in Art. 46 (10). Under this more detailed framework, the detention of minors emerges as a measure of last resort, to be imposed for the shortest possible time, under child-appropriate considerations and provisions. The authorities are instructed to make any effort to swiftly transfer minors to accommodation centres; the time limits of minors detention, however, remain as previously laid out, namely 25 days maximum, with the exceptional possibility to extend for another 20 days.

Article 10
Detention of vulnerable persons and of applicants with special reception needs
(Article 11 of Directive 2013/33/EU)

A new paragraph 10A is inserted after Article 46(10) of Law 4375/2016 as follows:

'10A. The health, including mental health, of applicants in detention who are vulnerable persons shall be of primary concern to the competent authorities.

In case of detention, the competent authorities shall ensure regular monitoring and adequate support taking into account their particular situation, including their health, and shall ensure that:

(a) minors are not detained, unless as a measure of last resort, with due consideration to their best interest, and after it has been established that other less coercive alternative measures cannot be applied. Such detention shall be for the shortest period of time and all efforts shall be made to withdraw detention and to refer the minors to accommodation centres suitable for them, and never to prison accommodation. In any case, the procedure for the referral of minors to accommodation centres should be completed within twenty five (25) days at the latest. If, due to extraordinary circumstances, such as a substantial increase in the number of minors entering the Greek territory, the competent authorities are unable, despite reasonable efforts, to ensure safe referral of minors within the period of twenty five (25) days set out above, the detention period may be extended for twenty (20) days;

(b) unaccompanied minors are detained separately from adults;

(c) minors have the possibility to engage in leisure activities, including play and educational/recreational activities appropriate to their age;

(d) detained families are provided with separate accommodation, with the consent of all adult family members, under conditions that guarantee adequate protection of their privacy and family life;

(e) detained women are accommodated separately from men, unless the latter are family members and on the condition that all individuals concerned consent thereto; detention of women should be avoided throughout pregnancy and for three (3) months after childbirth and their transfer and placement to suitable accommodation facilities should be sought.'

42. Article 11 refers to the principle of "family unity", in the context of accommodation of families.

43. Article 13 outlines the basic rules regarding access of minors to the educational system of Greece, focusing on the need to promptly address enrolment and attendance difficulties.

Article 13

Education of minors

(Article 14 of Directive 2013/33/EU)

1. Minor third-country nationals or minor stateless persons shall, during their stay in Greece, be granted access to the public education system under similar conditions as those applicable to Greek citizens and with facilitation as to enrolment in case they face objective difficulties in submitting the documentation required, and for so long as an expulsion measure against them or against their parents is not actually enforced. The right to secondary education may not be withdrawn for the sole reason that the minor has reached the age of majority. The specific terms and conditions governing the application of this paragraph shall be laid down by decision of the Minister for Education, Research & Religious Affairs.

2. Integration into the education system shall take place not later than three (3) months from the date on which the identification of the minor has been completed.

3. To facilitate integration into the public education system, informal education actions may be provided, including within accommodation centres.

4. Where access to the education system is not possible on grounds relating to the specific situation of the minor, appropriate measures shall be taken in respect thereof, in accordance with the provisions of the applicable law. (...)

44. Article 17 provides the “General Rules for the provision of material reception conditions and health care”, reiterating the obligation to provide dignified reception conditions and access to basic healthcare. Only in duly justified cases, special conditions may exceptionally be laid down by decision of the competent Minister, as regards material reception conditions which are different from the ones provided for a reasonable period which shall be as short as possible when: a) an assessment of the specific needs of the asylum seeker is required; or b) housing capacities normally available are temporarily exhausted (Article 18.5 Law 4540/2018).

Article 17

General rules on material reception conditions and health care
(Articles 17 and 19 of Directive 2013/33/EU)

1. The competent Reception Authority, in cooperation with the competent public bodies, international organisations or accredited social welfare organisations, as appropriate, shall ensure that material reception conditions are available to applicants through use of national, EU or other resources. Material reception conditions may be provided in kind or in the form of a financial allowance, and shall provide 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. The same standard of living shall also be provided to applicants who are in detention. Particular care shall be taken in relation to persons with special reception needs pursuant to Article 20(1).

2. Applicants shall have the right to free access to public health services as well as to receive nursing and health care, including the necessary treatment for diseases and the necessary mental health care, as required, pursuant to Article 33 of Law 4368/2016 (GG A 21).

3. The provision of all or some of the material reception conditions pursuant to paragraph 1 is subject to the condition that applicants are unemployed or that their employment does not provide sufficient means to ensure a standard of living adequate to safeguard their health and subsistence, subject to the income criteria laid down in Article 235 of Law 4389/2016.

Article 18

Modalities for material reception conditions
(Article 18 of Directive 2013/33/EU)

1. Where housing of applicants is provided in kind, it should take one or a combination of the following forms:

(a) accommodation in premises used for the purpose of housing applicants during the examination of an application for international protection made at the border or in transit zones;

(b) accommodation centres established in suitably adapted public or private buildings, managed by public or private non-profit organisations or international organisations;

(c) private houses, flats, hotels leased as part of housing programs for applicants, operated by public or private non-profit organisations or international organisations.

All the above forms of housing shall be subject to supervision by the competent reception authority, acting in cooperation with any jointly competent public bodies, as applicable.

2. Without prejudice to any specific conditions of detention pursuant to Articles 8 and 9, it should be ensured that:

(a) families are accommodated in the same premises and any dependent adults with special reception needs are accommodated together with close adult relatives who are responsible for them under the Greek law, while appropriate measures are taken to protect privacy and family life;

(b) applicants have the possibility of communicating with relatives, legal advisers or counsellors and persons representing UNHCR or other accredited social welfare organisations. Family members, legal advisers or counsellors, persons representing UNHCR and other certified social welfare organisations are granted access in order to assist the applicants. Limits on such communication may be temporarily imposed only on grounds relating to the security of the accommodation premises and of the applicants accommodated thereat;

(c) in referring applicants to appropriate accommodation facilities, the competent authorities take into consideration gender and age-specific concerns as well as whether the applicants are characterised as vulnerable persons;

(d) appropriate measures are taken to prevent assault and gender-based violence, including violence based on gender identity, sexual assault and harassment within the accommodation centres;

(e) transfers of applicants from one housing facility to another shall take place only when necessary and on the condition that applicants have been given the possibility to inform their legal advisers or counsellors of the transfer and of their new address.

3. Personnel working in accommodation centres shall be adequately trained, shall be bound by a code of conduct and shall treat as confidential any personal data that may come to their knowledge in the performance of their duties or in the course of their work, in accordance with the national law.

4. The management authorities of accommodation centres may involve applicants in managing the material resources and non-material aspects of life in the centre, with a view to better organising the centre's operation and supporting applicants in leaving as independently as possible.

5. In duly justified cases, the Minister for Migration Policy may exceptionally issue a decision setting special terms regarding material reception conditions different from those provided for in this Article, for a reasonable period which shall be as short as possible, when:

(a) an assessment of the specific needs of the applicant is required, in accordance with Article 20 of this Law, or

(b) housing capacities available are temporarily exhausted.

45. Article 21 (corresponding to art. 23 of the recast Reception Directive) refers to "Minors" and is mainly related to the best interest of the child. Indicators for best interest assessment are suggested, as well as psychosocial support for minors with different vulnerabilities.

Article 21

Minors

(Article 23 of Directive 2013/33/EU)

1. The best interests of the child shall be a primary consideration for the competent Authorities when implementing the provisions of this Law. Minors shall be provided with a standard of living

adequate for their physical, mental, spiritual, moral and social development. In assessing the best interests of the child, the competent authorities shall in particular take due account of the family reunification possibilities, the minor's well-being and social development, safety and security considerations, especially where there is a risk of the minor being a victim of human trafficking, and the views of the minor in accordance with his or her age and maturity.

2. The competent authorities shall ensure access to rehabilitation services for minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflicts, and ensure that appropriate mental health care is provided to them as well as specialised treatment, if needed.

3. The competent authorities shall ensure that minors have access to leisure activities, including play and recreational activities appropriate to their age and gender, within the premises of accommodation centres, and also to open-air activities.

46. Article 22 (Article 24 of the recast RCD) refers to "Unaccompanied and separated minors" and lays out the provisions of protection and representation of minors from the moment of arrival. Formalising the guardianship model, this Article also includes provisions for accommodation of minors, family tracking and unity of siblings. In accordance with this Article, the relevant authorities at Greek territory entry points, as well as any relevant authority that identifies the entry of an unaccompanied or separated child in the territory of Greece, shall inform the closest public prosecutor's office and the relevant authority for the protection of unaccompanied and separated children. The Reception and Identification Service is responsible for the reception and identification of unaccompanied children at RICs, while the General Directorate for Social Solidarity of the Ministry of Labour, Social Security and Social Solidarity is assigned with the task of protecting unaccompanied and separated children. This provision also provides for the adoption of a Ministerial Decision stipulating the supervisory bodies, the minimum standards and the conditions and procedures for the selection, referral, stay and completion of the provided accommodation and any other necessary details concerning the accommodation of unaccompanied minors who have reached the age of sixteen at supervised flats.

Article 22

Unaccompanied minors and separated minors
(Article 24 of Directive 2013/33/EU)

1. The competent authorities at the points of entry into the Greek territory, as well as any other competent authorities establishing the entry of an unaccompanied minor or separated minor into the Greek territory shall notify without delay the nearest public prosecution authority and the competent authority for the protection of unaccompanied minors and separated minors.

2. The Reception and Identification Service shall be responsible for the reception and identification of unaccompanied minors at the Reception and Identification Centres. In this context, it shall also ensure, through the competent public prosecutor, that the care of the separated minor is assigned to an adult relative, where this is deemed to be in the best interest of the minor. This relative shall act as representative of the minor and shall perform the duties assigned by the competent public prosecutor.

3. The Directorate-General for Social Solidarity of the Ministry of Labour, Social Security and Social Solidarity is designated to be the competent authority for the protection of unaccompanied minors and separated minors. It shall:

a. immediately take appropriate measures to ensure compliance with the obligations imposed to it hereunder and to ensure that unaccompanied minors and separated minors are properly represented and able to benefit from the rights and comply with the obligations provided for in this Law.

To that end, the competent authority shall take the necessary actions to ensure the appointment of a representative by the Public Prosecutor having material and territorial jurisdiction and shall immediately inform the unaccompanied minor of the appointment of such representative. Where a legal person is appointed as representative, a natural person among its members shall be essentially authorised to carry out the duties of representative. The competent authority for the protection of unaccompanied minors and separated minors shall assess on a regular basis the appropriateness of representatives and the availability of the necessary means for representation of unaccompanied minors;

b. trace the members of the unaccompanied or separated minor's family, with the assistance of accredited bodies and organisations, as soon as possible after an application for international protection has been lodged. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis, so as to avoid jeopardising their safety;

c. ensure the placement of unaccompanied minors with a foster family and shall ensure their supervision;

d. ensure that unaccompanied minors are referred to and escorted to accommodation centres for unaccompanied minors or to other accommodation centres where there are areas suitably adapted for this purpose, for as long as the unaccompanied minors are staying in the country or until they are placed with a foster family or at supervised lodgings. Changes of residence of unaccompanied minors shall be limited to a minimum and shall only take place where it is absolutely necessary;

e. ensure that minors are accommodated with their adult relatives or other adults suitable to undertake their care, if this is in the best interest of the minors and provided that formal procedures for the assignment of the minor's care to these persons have been followed according to law;

f. ensure that siblings are accommodated and live together, taking into account the age, gender, maturity and best interest of the minor concerned;

g. ensure accommodation of unaccompanied minors over 16 years old at supervised lodgings, without prejudice to their protection as minors. The supervisory bodies, the minimum specifications, the terms and procedures for selection, referral, accommodation or termination of the accommodation provided and all pertinent details shall be regulated by decision of the Minister of Labour, Social Security and Social Solidarity.

4. Personnel working for bodies responsible for handling cases of unaccompanied minors and separated minors shall be adequately and regularly trained on the needs of minors. This personnel shall be bound by a code of conduct and by confidentiality regarding personal data that come to their knowledge in the performance of their duties or in the course of their work.

5. The representative of an unaccompanied minor appointed pursuant to paragraph (1)(a) must have the necessary knowledge and experience to carry out his or her duties in a manner that serves the minors' best interests and overall well-being. Any person whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be eligible to be appointed as a representative. A person appointed as representative may be replaced by the authority referred to in paragraph 1 only when this person is unable to represent the minor on real or legal grounds.

Presidential Decree No. 141/1991

47. Presidential Decree No. 141/1991 refers to the possibility of a child to be placed under protective custody. According to Art. 118 (1):

“Persons who, due to their age or their mental health situation, are dangerous to public order or expose themselves to danger are placed in protective custody”.

48. No time limit is provided, as protective custody is imposed until the person is handed over to a relative or until they are referred to appropriate reception facilities. Minors, “who have deliberately or involuntarily, disappeared” are explicitly mentioned by said provision as persons who can be placed under protective custody. In case that the measure is imposed, a report by the police is sent to the Public Prosecutor.

49. Article 118(4) provides that persons under protective custody should not, in principle, be kept locked in police cells, unless there is no other way to prevent the risks that they might cause to themselves or to others.

50. The Public Prosecutors are the competent legal authority to issue a decision regarding the placement of children seeking asylum in protective custody.

Decision of the Director of the Asylum Service No 8269 (Gov. Gazette B´-1366/20.04.2018)

51. According to the Decision of the Director of the Asylum Service, applicants who enter the Greek territory through Lesbos, Samos, Rhodes, Kos, Leros and Chios are subject to a geographical limitation *inter alia* for the purposes of the EU-Turkey Statement of 18 March 2016. The limitation is lifted if the case is referred to the regular procedure. This decision was later struck down by the Council of State and replaced with Decision 8269/2018 which justifies the geographical limitation on grounds of public interest and the implementation of the EU-Turkey Statement.

Decision of the Director of the Asylum Service No 18984 (Gov. Gazette B´ - 4427/05.10.2018)

52. In October 2018, Decision 8269/2018 has been replaced by Decision No 18984 (Gov. Gazett B´ - 4427/05.10.2018) with a similar content, i.e. applicant whose application is lodged before the North Eastern Aegean Island Asylum Offices/Units are subject to a geographical limitation, with the exception of Dublin cases eligible for family reunification (Articles 8-11 of the Dublin Regulation) and persons belonging to vulnerable groups.

3. Law outlining guarantees for children: Guardianship

53. According to P.D. 220/2007 (Presidential Decree transposing into Greek legislation the provisions of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers), the child’s best interest is the

primary concern of the authorities. As regards unaccompanied minors, authorities should take all appropriate measures in order to ensure their representation by notifying the Public Prosecutor of Minors or the Public Prosecutor at the Court of First Instance, who acts as temporary guardian.

Law No. 4554/2018

54. Part three of Law No. 4554/2018 (available, in Greek, at: <https://bit.ly/2Bj1bq6>), issued on 18 July 2018, foresees the “Regulatory Framework for the Guardianship of Unaccompanied Minors” (Art. 13-32). The law provides, *inter alia*, that the Public Prosecutor for Minors or the local competent Public Prosecutor – in case that no Public Prosecutor for minors exists - is considered as the temporary guardian of the unaccompanied minor (Art. 16). This responsibility includes, among others, the appointment of a permanent guardian of the minor. The guardian of the minor is selected from a registry of guardians created under the National Centre for Social Solidarity (EKKA/NCSS) (Art. 16). In addition, the law provides for the guardian’s replacement procedure (Art. 17), their responsibilities (Article 18: ensuring their daily basic survival needs, representing and assisting the child in all judicial and administrative procedures, accompanying the child to health units for health care, exercising remedies against administrative or court decisions relating to the child, guaranteeing that the child is safe during his/her stay in the country and during the procedures for his/her return to the country of origin, ensuring psychological support and health care to the child, ensuring that the child has access to education, ensuring for appropriate reception and accommodation conditions), establishment, formation and functioning of the Supervisory Guardianship Board for Unaccompanied Children (Article 19), issues relating to unaccompanied children’s standard of living with third parties (Article 20), a best interests of the child determination procedure (Art. 21), responsibilities of a professional guardian (Article 23), register of unaccompanied children, professional guardians and accommodation centres for unaccompanied children (Articles 24, 25 and 26), establishment of a Department for the Protection of Unaccompanied Children at EKKA (Article 27), professional guardians’ selection procedure (Article 28), suspension and termination of guardianship (Article 29). Ministerial Decisions and standard operational procedures required by law in order to further regulate the functioning of the Registry of Guardians (Art.25) and the best interest of the child determination procedure (Art 21) had not been issued by mid-November 2018.

55. The regulating framework of guardianship for unaccompanied children has been finalised, as provided in Law No. 4554/2018, after the adoption of the following regulatory instruments:

- Ministerial Decision approving the Rules of Procedure of the Supervisory Guardianship Board for Unaccompanied Children (O.G. 2890 B’/5-7-2019);
- Ministerial Decision on the establishment of the EKKA Register of Unaccompanied Children (O.G. 2474 B’/24-6-2019);
- Joint Ministerial Decision on the establishment and operation of the EKKA Register of Professional Guardians (O.G. 2725 B’/2-7-2019);

- Ministerial Decision on the establishment and operation of the EKKA Register of Accommodation Centres for Unaccompanied Children (O.G. 2399/19-6-2019);
- Joint Ministerial Decision on the selection procedure for professional guardians (O.G. 2558 B/27-6-2019).

56. Under Article 73 of Law 4623/2019, the entry into force of the guardianship regulatory framework has been postponed and is currently set on 1 March 2020.

57. During the year 2019, pending the comprehensive enforcement of the newly adopted Guardianship legal framework, a « transitional guardianship program » was implemented, in the form of a Tripartite Agreement among the Ministry of Labour and Social Affairs, UNHCR and the NGO « METAdrasi ». Under this program, 55 authorised representatives would gradually be employed. These persons do not have the responsibilities of a guardian ; however, responsibilities are delegated to them, on a case by case basis, following prosecutor's orders. The authorised representatives are employed under contract by METAdrasi NGO. This tripartite agreement could not be extended over December 2019 to cover the needs until the Guardianship regulatory framework enters into force (1 March 2020). According to the Government, the technical and operational procedures and actions needed for EKKA to be fully capable of implementing the Guardianship provisions have exceeded the time-frame. As a consequence, the Ministry of Labour and Social Affairs, EKKA and the Authority for the Asylum, Migration and Integration Fund have jointly elaborated on alternative proposals and scenarios vis-à-vis the design and implementation of a transitional program providing for the representation of unaccompanied minors until the full implementation of Law 4554/2018 (whose postponement is under consideration). According to the transitional program, EKKA will be outsourcing external actors (entities) in order to organise and manage a system of « authorised representatives » assigned to unaccompanied minors. An Authorised Representative of unaccompanied minors is a trained professional authorised by the competent public prosecutor to carry out specific duties with regard to the minor's affairs and rights, to represent the minor before the authorities, to actively participate in the decision-making affecting the minor's life, to help the minors integrate into the local community. The Authorised Representative is also considered a legal representative of unaccompanied minors, as per the national law.

4. New legislative framework adopted after the complaint was lodged : Law 4636/2019

58. A new law on international protection was adopted in November 2019 : Law 4636/2019 « On international protection and other provisions » (OG 169/01-11-2019). This law collects and updates in a single instrument all provisions governing the qualification and status of third-country nationals or stateless persons as beneficiaries of international protection, refugee status or subsidiary protection, the reception of applicants, the procedure for granting and revoking international protection status and provision of legal protection.

59. This law stipulates that the Reception and Identification Service (RIS) is operationally responsible for the detailed record keeping, identifying and verifying the details of third-country nationals or stateless persons who illegally enter the country,

from the moment they arrive at the Greek territory. The reception includes five distinct stages (Article 39) that apply also to unaccompanied minors :

- a) Informing
- b) Reception and Identification
- c) Record keeping and Medical Screening
- d) Referral in order to initiate procedures for granting international protection status
- e) Further referral and transfer.

60. Unaccompanied and accompanied minors belong to vulnerable groups and thus they are offered specialized care and protection and are subject to procedural and substantive guarantees (Article 39 para. 5 d)). Where doubts arise as to whether a third-country national or a stateless person is a minor, by decision of the Centre's Head, a specific procedure shall be initiated in order to establish his/her maturity, in accordance with Joint Ministerial Decision No. 1982/16-02-2016. In any case, until the age assessment is completed, the person shall be considered a minor and shall be treated accordingly. According to Article 39 para.6 a), the applications of vulnerable persons for international protection shall be given priority.

61. According to Article 39 para.8, throughout the reception and identification procedure, the Head and the personnel of the centre shall ensure that third-country nationals or stateless persons :

- a) Are accompanied in decent living conditions ;
- b) Maintain their family unity,
- c) Have access to urgent health care and any necessary treatment or psychological support ;
- d) Receive treatment as appropriate, provided that they belong to vulnerable groups, in particular if they are unaccompanied minors or persons with disabilities. Moreover, special care shall be taken in order to ensure that these persons remain at the Reception and Identification Centres in specific and accessible areas, as far as possible, until the completion of reception and identification procedures ;
- e) Are adequately informed of their rights and obligations ;
- f) Have access to guidance, legal advice and assistance on their status ;
- g) Keep contact with civil society organisations that are active in migration and human rights and provide legal or social assistance ;
- h) Have the right to communicate with their relatives and close family members.

62. Moreover, according to Article 39 para.9, the role of international and European organisations is strengthened in providing assistance during the reception and identification procedure.

63. Article 48 para.2 of the Law deals with the detention of vulnerable persons and applicants with special reception needs.

64. As regards education, Article 51 of the new law provides as follows :

«1. Applicants who are minors and minor children of applicants, during their stay in the country, must attend primary or secondary education units of the public education system. The competent authorities must provide the necessary and adequate means in order to support and facilitate the procedure that should be followed to this end. The conditions for their enrolment are similar to those applicable for Greek nationals while facilitations shall be provided in case they have difficulties in providing the required supporting documents, as long as no removal order pending against themselves or against their parents is enforced. These applicants do not lose the right to attend secondary education schools solely due to reaching adulthood. [...]

2. Enrolling in public schools shall take place the latest within three (3) months after the identification procedure has been concluded. If the applicants who are minors and minor children of applicants do not comply with the requirement of paragraph 1 and do not enroll or do not attend the respective school courses because they do not wish to be included in the educational system, the material reception conditions shall be limited in accordance with article 57 et seq., and the administrative sanctions that apply to Greek citizens shall be imposed on the adult members of the minor's family.

3. In order to facilitate the inclusion in the public education system, temporary educational activities may be offered, inter alia, within the accommodation centres, in the context of informal education. These activities cannot substitute formal education.

4. Where the child's access to the education system is not possible due to specific reasons relating to the minor, appropriate measures to this end shall be taken, in accordance with the provisions of the existing legislation».

65. Article 59 applies to minors in general :

«1. The best interests of the child shall be a primary consideration for the competent Authorities when implementing the provisions of the present law. They shall ensure a standard of living adequate for the minors' physical, mental, spiritual, moral and social development. In assessing the best interests of the child the Authorities shall in particular take due account of the following factors: a) family reunification possibilities, b) the minor's well-being and social development, c) safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking and d) the views of the minor in accordance with his or her age and maturity.

2. The competent Authorities as appropriate, shall ensure access to rehabilitation services for minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman or degrading treatment or who have suffered from armed conflicts, and ensure that appropriate mental health care and specialized treatment is provided when needed.

3. The competent Authorities shall ensure that minors have access to leisure activities, including play and recreational activities, appropriate to their age and sex, within the accommodation centres, and also access to open-air activities.

4. The competent Authorities shall ensure that minor children of applicants or applicants who are minors reside with their parents, their unmarried minor siblings or with the adult relative who is responsible for them by law, provided it is in the best interests of the minors concerned».

66. Article 60 deals more specifically with unaccompanied and separated minors :

«3. The General Directorate for Social Solidarity, Ministry of Labour and Social Affairs, is the Authority responsible for the protection of unaccompanied and separated minors and in cooperation with the National Centre for Social Solidarity or other authorities:

a. Shall immediately take the appropriate measures in order to comply with its obligations under

the present law and ensure the necessary representation of unaccompanied and separated minors, ensuring thus the exercise of their rights as well as compliance with the obligations provided for in the present law. To this end, the authority shall take the necessary actions for the appointment of a representative through the local competent Public Prosecutor and shall immediately inform the unaccompanied minor about the appointment of his/her representative. In case a legal entity is appointed as representative, a physical person who is member of that legal entity must be appointed, who will perform the duties of the representative. The competent Authority for the protection of unaccompanied and separated minors shall assess regularly the eligibility of representatives and the availability of the necessary means for representing unaccompanied minors.

b. Shall start tracing the members of the unaccompanied or separated minor's family, assisted by certified bodies and organizations, as soon as possible, after an application for international protection is filed. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care is taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis so as to avoid jeopardizing their safety.

c. Shall ensure that unaccompanied minors are placed with foster families and are supervised.

d. Shall ensure that unaccompanied minors are referred and accompanied to accommodation centres for unaccompanied minors or to other accommodation centres, provided that they are suitably laid out for as long as they shall remain in the country or until they are placed with a foster family or at supervised flats. Changes in residence location of unaccompanied minors shall be limited to the minimum and only if they are necessary.

e. Shall ensure the residence of minors with their adult relatives or other adult persons who shall take care of them, provided that it is in the best interests of the minors and that procedures have been completed assigning these persons the task of looking after the minor, by the law.

f. Shall ensure that siblings shall live together, account taking of their age, sex, maturity and the best interests of the minor.

g. Shall ensure for the accommodation of unaccompanied minors who have reached the age of 16, in supervised flats while protecting the minors. By decision of the Minister of Labour and Social Affairs, the supervising bodies, minimum requirements and the terms and procedures for the selection, referral, residence and completion of accommodation and any other necessary detail are specified.

4. The personnel of bodies working on cases of unaccompanied and separated minors shall be appropriately trained and shall continuously undergo training on minors' needs. They shall be bound by the code of conduct and confidentiality rules in relation to any personal information they may obtain in the course of their work.

5. The person acting as representative of the unaccompanied minor who is appointed in accordance with case a, para.3, must have the necessary knowledge and expertise, in order to perform his/her duties ensuring the best interests and the well-being of the minor. Persons whose interests conflict or could potentially conflict with those of the unaccompanied minor may not be appointed as representative. The person appointed as representative shall be changed by the authority referred to in paragraph 1 only in case of failure to represent due to real or legal reasons».

RELEVANT INTERNATIONAL MATERIALS

67. In examining the present complaint, the Committee has referred to a wide range of international materials deriving from instruments and bodies of the Council of Europe, the United Nations and the European Union. Due to the volume of the sources quoted and for reasons of readability, these materials have been placed in an appendix (at p. 75), which forms an integral part of this decision on the merits.

THE LAW

PRELIMINARY CONSIDERATIONS

As to the personal scope of the complaint and the applicability of the provisions of the Charter at stake

68. Paragraphs 1 and 2 of the Appendix to the Charter read:

“1. Without prejudice to Article 12, paragraph 4, and Article 13, paragraph 4, the persons covered by Articles 1 to 17 and 20 to 31 include foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned, subject to the understanding that these articles are to be interpreted in the light of the provisions of Articles 18 and 19.

This interpretation would not prejudice the extension of similar facilities to other persons by any of the Parties.

2. Each Party will grant to refugees as defined in the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 and in the Protocol of 31 January 1967, and lawfully staying in its territory, treatment as favourable as possible, and in any case not less favourable than under the obligations accepted by the Party under the said convention and under any other existing international instruments applicable to those refugees.”

69. The Committee notes that ICJ and ECRE state that the present complaint concerns unaccompanied and accompanied migrant children. They indicate that the term “children” refers to the definition under international human rights law, in particular the UN Convention on the Rights of the Child (Article 1), meaning everyone under the age of 18. “Unaccompanied”, “accompanied” and “separated” children are also defined with reference to the definition given by the United Nations Committee on the Rights of the Child (see international law materials below). The complainant organisations clarify that although not a primary focus of the complaint, separated children are subject to the same violations of the Charter as unaccompanied and accompanied children in Greece.

70. The complainant organisations use the term “migrant” with reference to the definition given by the International Organisation for Migration (IOM) as “any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of the person’s legal status, whether the movement is voluntary or involuntary, what the causes for the movement are, or what the length of the stay is”. The definition used, therefore, includes asylum-seekers and refugees. The complainants submit that the complaint has a limited geographical and personal scope as available evidence shows a particularly dire situation for the rights of unaccompanied migrant children in mainland Greece and on the Greek islands and of accompanied migrant children on these islands.

71. The Committee, for the purposes of examining this complaint and according to the terminology used by the complainant organisations, will use the term “migrant children” as referring to both accompanied and unaccompanied migrant children. In

doing so, the Committee understands “migrant children” to include asylum-seeking and refugee children. It will refer specifically to asylum-seeking and refugee children where the examination of a specific aspect of the complaint is limited to or specific to such children (see, for instance, Article 31§1 below). As regards “separated children”, the Committee will only address the situation of such children where a particular aspect of the complaint concerning accompanied or unaccompanied migrant children raises an issue which is of a particular relevance to separated migrant children.

72. Referring to the case law of the Committee on the personal scope of Charter and the applicability of Charter provisions in certain cases and under certain circumstances to migrant children regardless of their legal status, the complainants submit that the migrant children concerned by the present complaint fall within the personal scope of the Articles of the Charter invoked. With regard to Article 31§1 of the Charter, they seek to differentiate the facts outlined in this complaint from those giving rise to the decision in *DCI v. the Netherlands*, Complaint No. 47/2008, decision on the merits of 20 October 2009. In that decision, the Committee found that children unlawfully present on the territory of the State Party concerned did not come within the personal scope of Article 31§1. The complainants argue that the factual scope of this complaint relates primarily to migrant children who are lawfully residing in Greece, having sought asylum and within the regular asylum procedure. This is in contrast to *DCI v The Netherlands* which concerned children unlawfully present on the territory of a State Party.

73. The complainant organisations assert that in line with international case law, the minimum core of Article 31§1 (minimum standards of housing conditions compatible with the principle of human dignity) should apply to the migrant children concerned by this complaint.

74. The Committee notes that the Government does not contest the applicability of the rights invoked to the persons concerned by the complaint.

75. The Committee refers to its previous decisions (*European Committee for Home-Based Priority Action for the Child and Family (EUROCEF) v. France*, Complaint No. 114/2015, decision on the merits of 24 January 2018, §§49-57; *Defence for Children International (DCI) v. Belgium*, Complaint No. 69/2011, decision on the merits of 23 October 2012, §§ 28-39; *Defence for Children International (DCI) v. the Netherlands*, Complaint No. 47/2008, decision on the merits of 20 October 2009, §§ 34-38, 46-48) and recalls that the restriction of the personal scope included in paragraph 1 of the Appendix should not be read in such a way as to deprive foreigners in an irregular migration situation of the protection of the most basic rights enshrined in the Charter or to impair their fundamental rights such as the right to life or to physical integrity, or their human dignity. With regard to children in an irregular migration situation on the territory of a State Party (whether accompanied or unaccompanied), the Committee reiterates that paragraph 1 of the Appendix should not be interpreted in such a way as to expose these children to serious impairments of their fundamental rights due to a

failure to guarantee the social rights enshrined in the Charter (EUROCEF v. France, Complaint No. 114/2015, op.cit., §55).

76. The Committee recalls that the application of the Charter's provisions to foreign migrants in an irregular situation (including accompanied or unaccompanied children) is entirely exceptional and is not applicable to all the provisions of the Charter (DCI v. Belgium, Complaint No. 69/2011, op.cit., §35). Such application is justified solely in the event that excluding foreigners in an irregular migration situation from the protection afforded by the Charter would have seriously detrimental consequences for their fundamental rights (such as the right to life, to the preservation of human dignity, to psychological and physical integrity and health) and would consequently place the foreigners in question in an unacceptable situation, regarding the enjoyment of these rights, as compared with the situation of nationals and of lawfully resident foreigners (ibid.).

77. The Committee has considered so far that the following provisions of the Charter are applicable to foreign children in an irregular migration situation on the territory of a State Party to the Charter:

- Article 7§10 (DCI v. Belgium, Complaint No. 69/2011, op.cit., §§ 84-86; EUROCEF v. France, Complaint No. 114/2015, op.cit., §§ 57, 135-139);
- Article 11 (DCI v. Belgium, Complaint No. 69/2011, op.cit., §§ 99-102; EUROCEF v. France, Complaint No. 114/2015, op.cit., §§ 57, 152-155);
- Article 13 (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, §§ 26-32; DCI v. Belgium, Complaint No. 69/2011, op.cit., §§ 119-122; EUROCEF v. France, Complaint No. 114/2015, op.cit., §§ 57, 163-166);
- Article 16 (in relation to the right of families to decent housing and particularly the right not to be deprived of shelter, see DCI v. Belgium, Complaint No. 69/2011, op.cit., §§ 133-136 and 141);
- Article 17§1 (FIDH v. France, Complaint No. 14/2003, op.cit., §§ 26-32; DCI v. the Netherlands, Complaint No. 47/2008, op.cit., § 66; DCI v. Belgium, Complaint No. 69/2011, op.cit., §§ 28-39; EUROCEF v. France, Complaint No. 114/2015, op.cit., §§ 57, 76-117);
- Article 17§2 (EUROCEF v. France, Complaint No. 114/2015, op.cit., §§ 57, 118-125; Statement of interpretation on Article 17§2, Conclusions 2011);
- Article 30 (EUROCEF v. France, Complaint No. 114/2015, op.cit., §§ 57, 181-186);
- Article 31§2 of the Charter (DCI v. the Netherlands, Complaint No. 47/2008, op.cit., §§ 46-48; EUROCEF v. France, Complaint No. 114/2015, op.cit., §§ 57, 173-177).

78. The Committee has also examined the situation of foreign children in an irregular migration situation under some of the abovementioned provisions of the Charter in the framework of the reporting procedure (see for instance Conclusions 2011, Ukraine, Article 31§2; Conclusions XXI-2(2017), Greece, Article 13§1; Conclusions 2019, Greece, Article 17§1; Conclusions 2019, France, Hungary, Article 17§2).

79. By contrast, the Committee has previously held that children in an irregular migration situation on the territory of a State Party do not come within the personal scope of Article 31§1. In doing so, it stated that States' immigration policy objectives and their human rights obligations would not be reconciled if children, whatever their residence status, were denied basic care and their intolerable living conditions were ignored. However, as far as Article 31§1 of the Charter is concerned, the Committee acknowledged that the denial of adequate housing, which includes a legal guarantee of security of tenancy, to children unlawfully present on its territory, does not automatically entail a denial of the basic care needed to avoid persons living in intolerable conditions. The Committee stated further that to require that a Party provide such lasting housing would run counter the State's policy objective of encouraging persons unlawfully on its territory to return to their country of origin (see *DCI v. the Netherlands*, Complaint No. 47/2008, *op.cit.*, §§ 41-45).

80. The Committee notes that the allegations raised in the present complaint relate mainly to children having sought asylum and within the regular asylum procedure in Greece (see paragraph 72 above). These children mostly arrive at the Eastern Aegean islands, where they stay in reception and identification centres (RICs) while their asylum application or that of their parents is being examined. According to UNCHR's estimates, the majority of asylum seekers on the islands come from Afghanistan, Syria and Somalia (June 2020). Their freedom of movement is limited to the island where they are living. Some of these children (mostly unaccompanied children and those designated as vulnerable) are later transferred to mainland Greece. The Committee's previous decisions *DCI v. the Netherlands*, Complaint No. 47/2008, *op.cit.*, §§ 6, 32-33, 58, and *DCI v. Belgium*, Complaint No. 69/2011, *op.cit.*, §§ 7, 24-25, mainly or partially concerned children unlawfully present on the relevant State's territory (following a failed asylum procedure, a failed regular immigration procedure and/or pending the results of a regular immigration procedure in *DCI v. the Netherlands* ; non asylum-seeking unaccompanied foreign minors and children in families illegally resident in *DCI v. Belgium*). In this complaint, in contrast, the Committee understands from the complainants' submissions and the information available to it that the children concerned are mostly children (accompanied and unaccompanied, including separated children) who have arrived in Greece and applied for asylum or international protection. They therefore fall within the definition of refugees under the 1951 Geneva Convention on the Status of Refugees.

81. The Committee refers to paragraph 2 of the Appendix to the Charter, which states that "each Party will grant to refugees as defined in the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 and in the Protocol of 31 January 1967, and lawfully staying in its territory, treatment as favourable as possible,

and in any case not less favourable than under the obligations accepted by the Party under the said convention and under any other existing international instruments applicable to those refugees". The Committee has underlined that the protection of a refugee under the Charter does not depend on the administrative recognition of refugee status by a State, which is done by the granting of asylum (Conclusions 2015, Statement of Interpretation on the rights of refugees under the Charter, para. 6).

82. The Committee reiterates that it has previously stated that the rights guaranteed by the Charter are to be enjoyed to the fullest extent possible by refugees (Conclusions 2015, Statement of Interpretation on the rights of refugees under the Charter). The Committee has identified a number of Charter provisions as applying to refugees, including Articles 11 (healthcare), 13 (social and medical assistance), 17 (elementary and secondary education), 16 and 31 (housing) (ibid). The level of protection afforded to refugees in respect of these rights, and specific elements thereof, varies in accordance with what the Convention relating to the Status of Refugees provides: while some of these rights must be guaranteed on an equal footing with nationals (health care, public relief and assistance and elementary education), others must be guaranteed to refugees at least on an equal footing with "aliens generally in the same circumstances" (secondary education, housing). The Committee has also considered that social rights directly related to the right to life and human dignity and which are part of a "non-derogable core" of rights, must be guaranteed to refugees (ibid, para. 11). Such rights include those set out in Articles 16 (in so much as it relates to the right

of families not to be deprived of shelter), 17§1 and 7§10 of the Charter. This finding is consistent with the Committee's findings that these rights apply to children in an irregular migration situation (see, *mutatis mutandis*, DCI v. Belgium, Complaint No. 69/2011, op.cit., §§38, 85 and 135-136), albeit that asylum-seeking and refugee children may enjoy greater levels of protection in relation to those rights than children in an irregular migration situation do.

83. In the light of the above considerations, the Committee finds that the refugee and asylum-seeking children concerned by this complaint, as long as their asylum claim has not been rejected by a body of final instance, come within the personal scope of the Charter. Therefore these children must be granted the rights contained in the Charter to the fullest extent possible, in accordance with paragraph 2 of the Appendix. This applies with regard to Articles 7§10, 11, 13, 16 (shelter) and 17§§ 1 and 2 of the Charter.

84. As far as Article 31 is concerned, the Committee notes that in its Statement of Interpretation on the rights of refugees under the Charter (Conclusions 2015) it referred in general to Article 31 of the Charter, without distinguishing between the first paragraph (adequate housing) and the second paragraph (shelter). The Committee itself, under the reporting procedure, has already engaged with the housing situation of refugees within the scope of Article 31§1 of the Charter (see Conclusions 2019, Greece, Italy, Turkey, Ukraine, Article 31§1, "Measures in favour of vulnerable groups").

85. The Committee will therefore proceed on the basis that Article 31§1, which guarantees the right to adequate housing in the form of long-term/permanent accommodation and not temporary shelter, applies to asylum-seeking and refugee children. For the purposes of this complaint, the Committee considers that these children, in so far as their presence in the territory cannot be considered unlawful, must be offered either long-term accommodation suited to their circumstances or housing of an adequate standard within a reasonable time. The temporary supply of emergency shelter as required by Article 31§2, however adequate, cannot be considered a lasting solution for the purposes of the rights of refugee and asylum-seeking children in terms of Article 31§1 (see, *mutatis mutandis*, European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §109). However, the extent and the manner in which Article 31§1 will apply to such children will necessarily depend on the stage/phase of their asylum procedure and the time they have already resided in temporary accommodation facilities. While it is acceptable to accommodate asylum-seeking children in temporary reception facilities for short periods of time after arrival and pending the first examination of their asylum claim, an obligation to provide more permanent forms of accommodation suited to their circumstances or housing of an adequate standard may arise if the children concerned have stayed in temporary facilities for a longer period than was necessary for the purposes of their identification and first examination of their asylum application. This obligation is particularly pertinent in situations in which the reason for asylum-seeking children's prolonged stay in temporary reception facilities is the lack of sufficient long-term accommodation arrangements. The applicability of Article 31§1 and its requirement to provide long-term accommodation or housing of an adequate standard will therefore depend on whether the asylum-seeking and refugee children concerned have stayed in temporary reception centres or shelters for excessive or lengthy periods of time, for instance due to delays in the processing of their asylum application or in their transfer to alternative housing arrangements by the competent authorities.

86. In respect of migrant children who may not have applied for asylum or whose asylum claim may have been rejected by a decision-maker of final instance, the Committee refers to its previous case law according to which children, regardless of their migration/residence status, come within the personal scope of Articles 7§10, 11, 13, 16 (right to shelter), 17§§1 and 2 and 31§2 of the Charter, in so far as excluding them from the protection afforded by these rights would have seriously detrimental consequences for their fundamental rights to life, health, physical and psychological integrity and to the preservation of their human dignity. However, according to the case law mentioned above, they do not come within the personal scope of Article 31§1, which concerns long-term housing arrangements and not temporary shelter.

87. In the light of the above, the Committee concludes that the children concerned by this complaint come within the personal scope of the provisions of the Charter invoked, except for Article 31§1 which applies only to asylum-seeking and refugee children.

As to the international cooperation

88. In assessing the present complaint, the Committee is of the view that the application by Greece of the Charter provisions in question needs to be considered in light of the extremely high number of unaccompanied and accompanied migrant children arriving to the Greek North-Aegean islands in the period under examination.

89. The Committee recalls the basic principle enshrined in Part I of the Charter, according to which “the Parties accept as the aim of their policy, to be pursued by all appropriate means both national and international in character, the attainment of conditions in which the rights and principles set forth by the Charter may be effectively realised”. In the situation under consideration here, this principle denotes a duty of international assistance and cooperation which is incumbent on each and every State Party to the Charter, so as to enable the attainment of conditions in which the rights of a very large number of extremely vulnerable children are effectively secured.

As to the provisions of the Charter at stake

90. The complainant organisations allege that Greece fails to fulfil its obligations with regard to unaccompanied and accompanied migrant children, in breach of the following provisions of the Charter:

- a. Article 31§§ 1 and 2, due to the failure to prevent homelessness and provide shelter for migrant children (both accompanied and unaccompanied children on the islands, and unaccompanied children on the mainland) in conditions compatible with human dignity;
- b. Article 17§1, due to the failure to provide accompanied migrant children (on the islands) and unaccompanied migrant children (both on the mainland and the islands) with the protection and care they require;
- c. Article 16, due to the failure to provide accommodation as a means of securing the social, legal and economic protection of the family unit in respect of accompanied migrant children on the islands;
- d. Article 7§10, as the children concerned by the complaint have no access to special protection against the physical and moral hazards to which they are exposed;
- e. Article 11§§ 1 and 3, due to the failure to take steps to facilitate access to health care and services, to address the causes of ill-health and to prevent diseases and the worsening of illnesses among migrant children;
- f. Article 13, due to the failure to provide material, social and medical assistance necessary for migrant children;
- g. Article 17§2, due to the failure to provide migrant children on the islands with access to free primary and secondary education and to encourage regular attendance at schools.

91. The Committee notes that the complaint under Article 16 of the Charter relates to the accommodation conditions of accompanied migrant children on the Greek islands. It essentially covers the same ground as those elements of the complaint that support the alleged violation of Articles 17§1 and 31§2 in respect of those children. This complaint does not relate to the protection of the family as one of the fundamental units of society or to the rights of children as family members but rather to the protection and accommodation of accompanied migrant children and the right to shelter under Articles 17§1 and 31§2 of the Charter, respectively. Accordingly, the Committee decides to assess this aspect of complaint under these provisions only.

As to the relevant domestic legislation and practice

92. The Committee takes note of some relevant developments in the domestic legal order, which occurred after the date of lodging of the complaint and are reflected in the information presented under “Relevant domestic law and practice”. It notes in particular that a new law on international protection was adopted in November 2019 (Law 4636/2019 “On international protection and other provisions”, entered into force on 1 January 2020). According to the Government, this law aims to introduce into Greek law a clearer legal framework, correcting inherent errors of the existing unstructured Greek asylum system and redesigning a new system which will be in line with the requirements of the EU legislation and will indeed respect in practice the rights of asylum seekers. The Government submits that the legal framework has been improved in order, on the one hand to facilitate, and on the other hand to speed up the processing of the applications for international protection.

93. The Committee notes however that most of the matters which form the object of the present complaint do not relate to specific shortcomings in the relevant domestic legislative framework. Rather, they relate to the failure to give effect in practice to some of the principles and rights recognised by existing legislation (i.e. concerning reception and accommodation conditions, health care, education, and guardianship arrangements). It notes that the complainants also take issue with specific legislation (the regime of protective custody under Article 118 of Presidential Decree 141/1991) that has not been repealed by the new legislation and is still applied in practice (see above the number of children held in protective custody according to EKKA statistics of April 2020).

94. The Committee also observes that certain international and national bodies have raised concerns about the recent legislative amendments and the announced policy of the Government to establish new closed facilities in the islands, as opposed to open centres such as the existing RICs (see the United Nations Working Group on Arbitrary Detention, report on its visit to Greece, 2-13 December 2019; Commissioner for Human Rights of the Council of Europe, letter sent to the Greek authorities on 25 November 2019; Greek Ombudsman and UNHCR’s comments on the draft legislation referred to by the complainant organisations). In this regard, the complainants submit

that the most recent legislative amendments (i.e. Law 4636/2019) may have an adverse impact on the situation of migrant children in Greece.

95. The Committee recalls that it rules on the legal situation and practice prevailing at the time of its decision on the merits (European Council of Police Trade Unions (CESP) v. France, Complaint No. 57/2009, decision on the merits of 1 December 2010, § 52). In the present complaint, having regard to the complainants' submissions, the Committee will focus on the practice which is the object of the complaint. Nothing in the Government's submissions indicates that this practice has significantly changed with regard to the specific grievances submitted in the present complaint following the entry into force of the new legislative framework in January 2020. Moreover, the Committee understands that the implementation of the new legislation and of the announced policy of the Government will take some time and it is therefore difficult to assess at this stage its implications for the complaint at hand.

As to the implementation of the immediate measures indicated by the Committee

96. In their response to the Government's submission on the merits, the complainant organisations request the Committee to address the fact that the immediate measures indicated by the Committee in its decision on admissibility and immediate measures of 23 May 2019 have not been implemented by the Greek authorities. They indicate that the immediate measures are inherently linked to the merits of the complaint in that they were required to ensure the effective respect of the rights protected under the Charter, in particular to prevent irreparable harm.

97. The Government does not provide specific information on the implementation of the immediate measures indicated by the Committee.

98. The Committee, in its decision of 23 May 2019, decided that it was necessary to indicate to the Government, in accordance with Rule 36 of the Rules, immediate measures with a view to avoiding serious, irreparable injury or harm to the migrant children at immediate risk. In particular, the Committee indicated the following immediate measures to the Government: to ensure the appointment of a guardian at the time that a separated or unaccompanied child in need of international protection is identified as well as the effective functioning of the guardianship system; to ensure the use of alternatives to detention of migrant children, and to ensure in particular that unaccompanied children in police stations, pre-removal centres and RICs are provided with immediate access to age-appropriate shelters; to ensure access to food, water, education, and appropriate shelter; and to ensure access to health care and medical assistance, in particular by ensuring the presence of an adequate number of medical professionals to meet the needs of the children whose rights are the subject of this complaint.

99. The Committee wishes to stress the importance of immediate measures in terms of the effective operation of the collective complaints procedure under the Protocol. States Parties to the Protocol must implement the immediate measures indicated in order to avoid irreparable injury or harm to the persons whose rights are

the subject of the complaint. Any failure by a respondent State to comply with immediate measures will undermine the effective exercise of the rights guaranteed by the Charter.

I. ALLEGED VIOLATION OF ARTICLE 31 §§1 and 2 OF THE CHARTER

100. Article 31 §§1 and 2 of the Charter reads:

Article 31 – The right to housing

Part I: "Everyone has the right to housing."

Part II: "With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

1. to promote access to housing of an adequate standard ;
2. to prevent and reduce homelessness with a view to its gradual elimination;

..."

A – Arguments of the parties

1. The complainant organisations

101. ICJ and ECRE allege that Greece has failed to fulfil its obligation to ensure the effective exercise of the right to housing of an adequate quality and to prevent homelessness and provide shelter for migrant children in conditions compatible with human dignity. This is due to the oversaturation of reception places for the migrant population in general and the shortage of shelters available to accommodate migrant children, with the result that the basic needs of children (i.e. food, water, clothing, sufficient space, privacy, security and access to health care) are manifestly not being met. All these circumstances result in migrant children being forced to live in conditions that fail to meet the standard of human dignity. The problem is not a temporary situation but remains an endemic and longstanding one.

102. With regard to migrant children (accompanied and unaccompanied) on the islands, the complainant organisations submit that due to the lack of age-appropriate reception places on the islands, children are living for prolonged periods in overcrowded conditions in the RICs in makeshift shelters or small tents which lack insulation or heating, or are even sleeping outside the RIC on the ground. They are often sharing shelters/tents/sleeping areas with unrelated adults, with no security guards during the night, and poorly lit shower and toilet areas. Migrant children who are accompanied by both parents are not considered as vulnerable according to the law (see Article 14, para. 8, Law 4375/2016) and a fast-track border procedure applies to their case, along with the imposition of a geographical restriction to remain within the limits of each island (see above domestic law, the decision of the Director of the Greek Asylum Service). In practice, their asylum procedure lasts for significantly long periods in which the applicants have the obligation to remain on the islands. Consequently, children accompanied by both parents can leave the Greek islands only

in cases where they are granted international protection status. As to those persons identified as vulnerable in accordance with the law (unaccompanied children and single parent families), although they are exempt from the fast-track border procedure and should instead be transferred to the mainland, there is a significant delay in transfers due to the limited accommodation capacities there. Migrant children are, therefore, entrapped for prolonged periods of time, which is only exacerbated with continuous numbers of arrivals to the Greek islands. Notwithstanding the significant number of migrant children on the islands, the available data show that the reception capacity within the RICs and elsewhere on the islands does not meet the needs and requirements of migrant children, whether accompanied or unaccompanied. In this regard, the complainant organisations note for instance that in October 2018, the population in Samos RIC was nearly seven fold its capacity, Lesbos and Chios RIC were over double their capacity, Kos RIC was exceeding its capacity and Leros RIC was reaching its capacity.

103. With respect to unaccompanied children on the mainland, the complainant organisations claim that two out of three of these children are deprived of an age appropriate reception/accommodation place. A significant number of these children are homeless, living in the streets and public parks whilst others are living in sub-standard conditions in hotels or open accommodation centres, not suited to accommodating migrant children. A number of unaccompanied children also face deprivation of their liberty when being detained under the pretext of “protective custody” in police stations and pre-removal centres, as a result of the lack of reception places for them.

104. The complainant organisations point out that in both situations described above (islands and mainland), the inadequate and dangerous living conditions that children are subject to have an impact on their physical and mental health and have led to reported cases of illnesses, self-harm and suicide attempts.

105. The complainant organisations refer to other international and European law and standards (the case law of the European Court of Human Rights under Article 3 of the European Convention, UN human rights treaties and EU Law) that should be taken into account for the interpretation of Article 31 of the Charter.

106. In their reply to the Government’s observations on the merits, ICJ and ECRE stress that the complex situation in Greece related to a large number of arrivals of migrant children cannot absolve the Greek Government of implementing their international obligations. In their view, the Government has chosen to rely on generic and largely descriptive information, as well as argumentation relating to the complexity of the situation in Greece, without providing segregated data capable of rebutting the claims of the complainant organisations. The information provided by the Government with regard to specific situations (i.e. Lesbos and Samos RIC) also does not refute the claims made in the complaint, especially in view of the more up-to-date information submitted with regard to the reception capacity of RICs and the shortage of

accommodation places for unaccompanied throughout Greece. As regards accompanied children, the complainants underline that it is precisely due to the overcrowding in some RICs (i.e. Moria in Lesvos) that families with children are obliged to remain around the facility in makeshift accommodations, and that the Government has failed to explain where these people are being accommodated following the removal of their makeshift structures.

2. The respondent Government

107. The Government maintains that Greece's policy not to refuse any children's entry to the country ensures that all unaccompanied children are treated first and foremost as children, irrespective of their migration status. Immediately after arrival, unaccompanied children are provided with material conditions that include housing, food and clothing. These are provided to both asylum-seeking and non-asylum seeking children.

108. Considering the increase in unaccompanied children arrivals at the entry points (the Government refers to the EKKA statistics of 2019), the Government states that its main actions are focused *inter alia* on the immediate creation of places in Accommodation Centres (shelters) for such children, the finalisation of the institutional framework and the extension of their accommodation (over the age of 16) to semi-independent living (SIL) flats, and the continuation of temporary accommodation measures. The Reception and Identification Service (RIS) takes the necessary actions in order to prepare the RICs on the Eastern Aegean Islands and the Accommodation Facilities on the mainland, especially in terms of improving building and accommodation facilities inside the centres as well as maintaining the existing facilities (i.e. infrastructure improvement, sewage system, electrical installations). It also makes every effort to speed up procedures to ensure transfer of third country nationals to the mainland, with a view to quickly decongesting the islands and ensuring appropriate living conditions. At facilities managed by the RIS, accommodation and support to unaccompanied children is offered in a separate delimited zone of each facility (safe zone), close to the psychosocial services and education areas and away from the general population. These areas are operational in the RICs of Lesvos, Chios and Leros and are under construction in the RICs of Samos and Kos.

109. The Government provides specific information concerning living conditions in the RICs in Lesvos and Samos. For instance, in the RIC of Lesvos, children below the age of 15 as well as unaccompanied under-aged girls are accommodated in the Safe Zone, for which the RIC is in close cooperation with the IOM and an NGO. Children with families are accommodated either in containers or in big tents suitable for winter that are equipped with a floor, waterproof cover and heating, and with internal partitions ensuring the privacy of family life. The Government indicates that unfortunately a number of families build makeshift accommodations outside the centre in order to have more space and that these are constantly removed by the RIC personnel since they are dangerous for their safety and the safety of others.

110. In relation to transfers of unaccompanied children from RICs to the mainland, the Government refers specifically to extraordinary operations that have been carried out for the transfer of such children from the RIC of Lesbos (Moria) to a permanent accommodation centre on the mainland (80 children in December 2019). It observes that in 2019, unaccompanied children were referred to mainland accommodation centres six months after their arrival at the RIC.

111. As regards accommodation places for unaccompanied children (mainland), the Government indicates that accommodation centres (shelters) represent the majority of places and have been operating at full capacity. In addition, SIL apartments have been operating as an alternative long-term accommodation scheme since January 2018 and the plan was to develop in total 260 places by the end of 2019. The Ministry of Labour and Social Affairs has requested the European Commission to extend the operation of the hotels managed by the IOM, but with a view to progressively reducing their operation and accommodate unaccompanied children over the age of 16 in supervised SIL flats. During the period from July to October 2019, the Ministry of Labour and Social Affairs had to proceed with the phase-out of the hotel scheme for the accommodation of UAC due to non-available emergency funding from the European Commission.

B – Assessment of the Committee

112. The Committee recalls that under Article 31§1 of the Charter, States Parties shall guarantee to everyone the right to housing and shall promote access to adequate housing. States must take the legal and practical measures which are necessary and adequate for the effective protection of the right in question. States enjoy a margin of appreciation in determining the steps to be taken to ensure compliance with the Charter, in particular as regards the balance to be struck between the general interest and the interest of a specific group and the choices which must be made in terms of priorities and resources (European Roma and Travellers Forum (ERTF) v. France, Complaint No. 64/2011, decision on the merits of 24 January 2012, §95).

113. Moreover, given that the achievement of the rights provided for by Article 31§1 is exceptionally complex and particularly expensive to resolve, States Parties must take measures that allow it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources. States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities as well as for other persons affected (ERTF v. France, Complaint No. 64/2011, op.cit., §96).

114. The Committee has also held that equal treatment must be assured with respect to housing to the different groups of vulnerable persons, particularly low-income persons, unemployed, single parent households, children, persons with disabilities including mental health problems (Conclusions 2003, Article 31§1, Italy). More recently, it has also requested that States report on the specific housing situation of

refugees as a vulnerable group within the scope of Article 31§1 (Conclusions 2019, Article 31§1, Greece). This includes children with visible and non-visible psychological vulnerabilities such as those that may be experienced by the children whose rights are the subject of this complaint.

115. The Committee further recalls that under Article 31§1, “adequate housing” means a dwelling which is safe from a sanitary and health point of view, i.e. it must possess all basic amenities, such as water, heating, waste disposal, sanitation facilities and electricity and must also be structurally secure, not overcrowded and with secure tenure supported by the law (see Conclusions 2003, Article 31§1, France and DCI v. the Netherlands, Complaint No. 47/2008, op.cit., §43).

116. Under Article 31§2, the Committee reiterates that homeless persons must be offered shelter as an emergency solution. Moreover, to ensure that the dignity of the persons sheltered is respected, shelters must meet health, safety and hygiene standards and, in particular, be equipped with basic amenities such as access to water and heating and sufficient lighting. Another basic requirement is the security of the immediate surroundings (DCI v. the Netherlands, Complaint No. 47/2008, op.cit., §62; EUROCEF v. France, Complaint No. 114/2015, op.cit., §174).

117. Since the right to shelter is closely connected to the right to life and is crucial for the respect of every person’s human dignity, under Article 31§2 of the Charter, States Parties are required to provide adequate shelter to children unlawfully present in their territory for as long as they are within their jurisdiction. (DCI v. the Netherlands, Complaint No. 47/2008, op.cit., §§47 and 64).

118. With regard to persons regularly resident or regularly working within the territory of the State Party concerned, the Committee recalls that the temporary provision of shelter, however adequate, cannot be considered a lasting solution. These persons must be offered, within a reasonable time, either long-term accommodation suited to their circumstances or housing of an adequate standard as provided by Article 31§1 (FEANTSA v. the Netherlands, Complaint No. 86/2012, op.cit., §109).

119. As regards persons irregularly present within the territory of a State Party, since no alternative accommodation may be required from States, eviction from shelter should be banned as it would place the persons concerned, particularly children, in a situation of extreme helplessness which is contrary to the respect for their human dignity (DCI v. the Netherlands, Complaint No. 47/2008, op.cit., §63; FEANTSA v. the Netherlands, Complaint No. 86/2012, op.cit., §110). The Committee refers in this connection to its Statement of Interpretation on Article 31§2 (Conclusions 2015) and recalls that eviction from shelters without the provision of alternative accommodation must be prohibited.

120. The Committee recalls that Article 31§§1 to 3 of the Vienna Convention on the Law of Treaties require the terms of a treaty to be read in their context and in the light of its objective and purpose, as well as in harmony with other relevant and applicable rules of international law. In so doing, the Committee must consider Article 31 of the

Charter in the light of complementary international instruments and authoritative interpretations thereof, above all the Convention on the Rights of the Child and the General Comments of the Committee on the Rights of the Child when it rules on an alleged violation of any right of the Charter applicable to children (see *mutatis mutandis*, EUROCEF v. France, Complaint No. 114/2015, op.cit., §54).

121. In this connection, the Committee notes that Article 27§1 of the Convention on the Rights of the Child recognises the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. As provided in Article 27§3, States, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and other responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing. The Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, in their joint general comment of 2017 on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return (§ 50), have underlined that States should take measures to ensure an adequate standard of living in temporary locations, such as reception facilities and formal and informal camps, ensuring that these are accessible to children and their parents. States should develop detailed guidelines on standards of reception facilities, assuring adequate space and privacy for children and their families.

122. The Committee also notes that according to the European Court of Human Rights, the failure to provide migrant or asylum-seeking children (accompanied or unaccompanied) with accommodation and adequate living conditions may amount to a degrading treatment under Article 3 of the European Convention of Human Rights (*Rahimi v. Greece*, Judgment of 5 April 2011, §§ 87 and 93-94; *Tarakhel v. Switzerland* [GC], Judgment of 4 November 2014, §§ 116-122; *Khan v. France*, Judgment of 28 February 2019, §§ 74-95; *Sh.D. and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia*, Judgment of 13 June 2019, §§ 52-62; see *a contrario H.A. v. Greece*, Judgment of 28 February 2019, §§171-175).

123. In light of the specific allegations put forward in the present complaint, the Committee will examine separately the situation of migrant children (accompanied and unaccompanied) on the Greek islands and the situation of unaccompanied migrant children on the Greek mainland in terms of Articles 31§1 and 31§2 as appropriate.

(i) *On the situation of migrant children (accompanied and unaccompanied) on the Greek islands*

(i) *Article 31§2 of the Charter*

124. The Committee notes that this part of the complaint of ICJ and ECRE relates to the reception and accommodation conditions of migrant children (accompanied and unaccompanied), including refugee and asylum-seeking children, on the Greek

islands. According to the complainant organisations, there is a systematic lack of age-appropriate reception facilities/shelters on the islands, with the result that children are living for prolonged periods in overcrowded and inadequate/substandard conditions in the RICs (often referred to as “hotspots”) located on these islands.

125. The Committee notes that these allegations are supported by information from a large number of international and national sources (Council of Europe Commissioner for Human Rights, report following her visit to Greece from 25 to 29 June 2018, 6 November 2018, §§ 14-21, and statement of 31 October 2019 following her visit to Greece; PACE Resolution 2280 (2019); United Nations Committee against Torture, Concluding observations, 3 September 2019; United Nations Committee on the Elimination of Racial Discrimination, Concluding observations, 3 October 2016; UNCHR submissions; United Nations Special Rapporteur on the human rights of migrants, report on his mission to Greece, 24 April 2017, §§ 57-59; European Union Agency for Fundamental Rights (FRA), Update of the 2016 Opinion of the FRA on fundamental rights in the ‘hotspots’ set up in Greece and Italy, February 2019; Greek National Commission for Human Rights). The Committee has itself raised this issue under the reporting procedure within the scope of Article 31§2 (right to shelter) and deferred its conclusion on this point (Conclusions 2019, Greece).

126. The Committee observes from the data provided in the abovementioned sources and the submissions of the complainant organisations that there is a systemic problem of overcrowding in the five RICs of the islands of Chios, Kos, Leros, Lesbos and Samos. At the time of the Commissioner for Human Rights’ visit to Greece (June 2018), around 11,500 people were hosted in these RICs, against a total nominal capacity of 6,246. According to official data from the National Coordination Centre for Border Control, Immigration and Asylum, the total reception capacity in the RICs on 30 September 2018 was of 6,438, while the total number of persons residing there was 16,174. More recent data show that the level of overcrowding has persisted or even worsened. For instance, on Samos 6,782 people were staying in a centre designed for 600 while others are in makeshift shelters pitched on surrounding fields on a steep slope (UNCHR, February 2020; see also Council of Europe Commissioner for Human Rights’ statement of 31 October 2019 following her visit to reception facilities in Lesbos and Samos). Moria on Lesbos was hosting 18,342 inside a facility for 2,200 and others were staying in adjacent olive groves (UNCHR, February 2020).

127. The Committee further notes that according to the information provided in the complainant organisations’ submissions and the abovementioned sources, overcrowding is generally combined with substandard living conditions within the RICs concerned, with lack of privacy, insalubrious conditions (water shortages, insufficient sanitation) and violence. For example, the Commissioner for Human Rights reported in 2018 poor hygiene conditions (insufficient sanitation facilities, sewage problems)

and security problems (violence) in Moria RIC on Lesbos. Following her last visit to Greece, including the RICs on Lesbos and Samos (October 2019), the Commissioner noted that the situation of migrants in the Greek Aegean islands had dramatically worsened over the past 12 months and was appalled by the unhygienic conditions in which they were kept. On Samos, she referred to the fact that families were chipping away at rocks to make some space on steep hillsides to set up their makeshift shelters, often made from trees they cut themselves.

128. The Committee notes with concern that more recently, on 8 September 2020, a fire broke out in Moria RIC on Lesbos and destroyed most of the centre and the informal settlements surrounding it. This left more than 12,000 people, including more than 4,000 children, without shelter. Although some of those who were living in the centre have been transferred to new emergency facilities or to the mainland, this event both reflects and compounds the already difficult and insecure conditions faced by the children living in that centre.

129. Although there are no specific data in the parties' submissions on the number of children living in each of the RICs, the Committee notes that children account for 33% of the population of migrants and refugees residing on the Aegean islands (UNCHR, June 2020, compared to 29% in October 2018).

130. With regard to accompanied children, in so far as they are not considered vulnerable persons according to the legislation and are subject to a fast-track border procedure, they remain with their families in the RICs on the islands until they are granted international protection status. The length of stay in the RIC will therefore depend on the length of their asylum procedure. With regard to unaccompanied children (or children in single-parent families), the Committee notes that even if they are considered vulnerable according to domestic law and should be transferred to the mainland, in practice they may remain in the RICs due to lack of sufficient accommodation facilities on the mainland or to delays in medical and psychosocial assessment. It notes in this regard the Government's submission that in 2019 unaccompanied children were referred to the mainland six months after their arrival at the Moria RIC. Both accompanied and unaccompanied children have to endure the overcrowded and substandard conditions described above for at least some months.

131. Furthermore, the Committee considers that the Safe Zones or dedicated areas operating in some of the RICs concerned for unaccompanied children are unsuitable in terms of capacity and living conditions. It notes from UNCHR's submissions that while on 30 June 2019 there were 625 unaccompanied children at the islands' RICs, the official capacity of the two only Safe Zones operating was respectively 70 places in Chios and 65 in Moria on Lesbos. It notes from the Commissioner for Human Rights' report of 2018 that the lack of activities and proper social and psychological care results in many children spending most of their day-time outside the Safe Zones, where they

are exposed to different risks (this is a particular concern with regard to Moria). In December 2018, FRA visited the Vathy RIC on Samos, which was hosting approximately 267 unaccompanied children. Only 120 of them lived in the dedicated area, which had an official capacity to host 56 children. The other children lived either elsewhere in the centre or in the area surrounding the camp. The containers in the dedicated area had broken doors following an incident, water leaking inside and no proper beds or mattresses (FRA, *op. cit.*, February 2019).

132. The Committee notes that the Government has not provided data contesting the described overcrowded and substandard conditions at the RICs or establishing the sufficiency of alternative shelter places for children on the islands. In this latter respect, the Committee notes from official data of the National Centre for Social Solidarity (EKKA) that in May 2020, there were only eight shelters for unaccompanied children on the islands, with a total capacity of 148 places in Lesbos, 18 places in Chios and 18 places in Samos. On the contrary, the Government admits that due to the increased migration flows, the exceptional circumstances often exceed the reception capacity of the islands, and asks the Committee to take into account the extraordinary nature of the situation.

133. The Committee is aware that the Greek State has been faced in recent years with a situation of extreme difficulty as a result of the high flow of migrant persons and asylum seekers arriving at its land and sea borders. The situation has been particularly complex on the islands, following the implementation of the EU-Turkey Statement of 18 March 2016, according to which all persons in an irregular migration situation and asylum seekers who arrived from Turkey to the Greek islands after 20 March 2016 and whose applications for asylum have been declared inadmissible should be returned to Turkey. Greece imposed a geographical restriction on all migrants preventing them from leaving the islands, unless they have been identified as vulnerable. That being said, the Committee considers that the exceptional nature of the situation resulting from an increasing influx of migrants and refugees and the difficulties for a State in managing the situation at its borders cannot absolve that State of its obligations under Article 31§2 of the Charter to provide shelter to migrant and refugee children, in view of their specific needs and extreme vulnerability, or otherwise limit or dilute its responsibility under the Charter. As mentioned above, the right to shelter is closely connected to the right to life and is crucial for the respect of every person's human dignity (*DCI v. the Netherlands*, Complaint No. 47/2008, *op.cit.*, §§47 and 64), in particular where the persons concerned are children.

134. In the light of the above considerations, and taking due account of the particularly vulnerable situation of the children concerned by the complaint, the Committee is of the view that the overcrowded and substandard living conditions at the islands' RICs do not satisfy the requirements of adequate shelter within the meaning of Article 31§2 of the Charter. The Committee therefore holds that there is a violation of Article 31§2 due to the inappropriate accommodation for accompanied and unaccompanied migrant children on the islands.

(ii) Article 31§1 of the Charter

135. The Committee also finds that the situation of asylum seeking and refugee children who are staying for excessively long periods of time in the RICs raises issues in terms of Article 31§1, which applies to such children. The Committee considers that if, as has already been found, the living conditions of these children do not satisfy the requirements of adequate shelter in terms of Article 31§2, they cannot meet the requirements of adequate housing or lasting accommodation within the meaning of Article 31§1. The situation of these children is caused by the failure of the respondent State to provide sufficient non-emergency accommodation on the islands pending the examination of their asylum applications or those of their parents.

136. The Committee therefore holds that there is violation of Article 31§1 due to the failure to provide adequate accommodation to refugee and asylum-seeking children on the islands.

(ii) On the situation of unaccompanied migrant children on the mainland

(i) Article 31§2 of the Charter

137. The Committee notes from the complainant organisations' submissions that two out of three unaccompanied children on the mainland are deprived of an age appropriate reception/accommodation place and that a significant number of these children are homeless or living in substandard conditions in hotels or open accommodation centres. According to EKKA data of 30 September 2018, 2,363 unaccompanied children were on the waiting list for a shelter, out of which 272 resided under informal housing arrangements and 451 reported as homeless.

138. The Committee also notes from the UNCHR's submissions that despite some progress concerning the institutional framework and the development of more holistic models of care arrangements for unaccompanied children, deficiencies in the number, type and quality of care arrangements available for these children remain. UNCHR submits that according to EKKA (31 May 2019), there were 2,858 children outside the long term care system, including 1,060 in informal and insecure housing conditions or homeless. UNCHR draws attention to the fact that a significant number of unaccompanied children (27%) are homeless or living in informal/insecure housing.

139. The Committee notes that the Government refers to the fact that UAC shelters have been operating in full capacity and that there are plans to increase the existing number of available places. The Government also states that more places for unaccompanied children are planned in SIL apartments (for children 16-18 years old) and in additional Safe Zones within open accommodation sites.

140. The Committee observes that several Council of Europe and international bodies have raised concerns about the accommodation situation of unaccompanied migrant children in mainland Greece (Council of Europe Commissioner for Human Rights, report following her visit to Greece from 25 to 29 June 2018, 6 November 2018, §§ 29-33; European Court of Human Rights, *Rahimi v. Greece*, op.cit., §§ 87-94, and *Sh.D. and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia*, op.cit., §§ 52-62; CPT, Report to the Greek Government on the visit to Greece carried out by the CPT from 10 to 19 April 2018, CPT/Inf(2019)4, § 122; Committee of Ministers of the Council of Europe, Decision CM/Del/Dec(2019)1348/H46-9, 6 June 2019, and Decision CM/Del/Dec(2020)1383/H46-7, 1 October 2020, concerning the execution of judgments by the European Court in cases against Greece; PACE Resolutions 2118 (2016), 2174 (2017) and 2280 (2019); United Nations Human Rights Committee, communication No. 2770/2016, *O.A. v. Denmark*, 11 December 2017). The Committee itself has engaged with this issue in connection with Article 31§2 of the Charter under the reporting procedure (Conclusions 2019, Greece).

141. The Committee notes that the situation of unaccompanied children has not improved. According to more recent data from EKKA (15 May 2020), the estimated overall number of unaccompanied children present in Greece was 5,028 including 341 separated children. Out of these, 1,485 were in long term accommodation (unaccompanied children shelters and SIL apartments) and 589 in temporary accommodation (Safe Zones and emergency hotels). Besides those in other types of emergency or temporary facilities (1,987 children in emergency unaccompanied children accommodation sites, open temporary accommodation facilities, RICs and protective custody), 967 unaccompanied children were reported as living in informal/insecure housing conditions such as living temporarily in apartments with others, living in squats, being homeless and moving frequently between different types of accommodation. Although these data refer to the overall situation of unaccompanied children in Greece, the Committee understands that the majority of the children living on the streets or homeless are on the mainland following their transfer from one of the RICs, having regard also to the specific allegations put forward in the complaint.

142. The Committee takes note of the Government's argument that there has been an unforeseen increase of unaccompanied children arriving in Greece, particularly during 2019, despite the efforts made to increase shelter and accommodation capacities. It considers however that the fact that a significant number of unaccompanied children are homeless or live in informal/insecure housing conditions show that the shelter provided for these children on the mainland fails to fulfil the requirements of Article 31§2 in terms of quantity or capacity. The Committee is therefore of the view that Greece fails to guarantee the right to shelter for unaccompanied migrant children, for the purpose of preventing and reducing homelessness, in breach of Article 31§2.

(ii) *Article 31§1 of the Charter*

143. The Committee notes that ICJ and ECRE do not complain about the quality of the shelter provided in long-term accommodation (unaccompanied children shelters and SIL apartments). They however submit that hotels and open accommodation centres are not suitable for accommodating unaccompanied children.

144. The Committee decides to assess this part of the complaint under Article 31§1 of the Charter, since it concerns the provision of long-term suitable accommodation within a reasonable time, at least for as long as the children concerned remain in Greece and their asylum claim has not been rejected by a body of final instance. The Committee notes that the temporary accommodation facilities provided for unaccompanied children on the mainland (hotels and Safe Zones in open temporary accommodation centres) should in principle be used as short-term or emergency solutions in light of the insufficient number of available shelter places. Domestic law provides that unaccompanied children shall be referred to accommodation centres for unaccompanied children or to other accommodation centres where there are areas suitably adapted for this purpose, “for as long as they stay in the country or until they are placed with a foster family or at supervised lodgings” (Article 22 of Law 4540/2018; see also Article 60 of Law 4636/2019). The Committee notes however that according to UNCHR, although initially envisaged as temporary arrangements, the hotels have slowly become in 2018 and 2019 a standard part of the shelter solutions for unaccompanied children. The Committee notes in this regard that according to a September 2018 report by *Médécins du Monde Greece*, between 40% and 45% of the children who end up in hostels after months on a waiting list have serious mental health problems and require special care (Council of Europe Commissioner for Human Rights, 2018, §33).

145. The Committee considers that the fact that some refugee and asylum-seeking unaccompanied children may remain for lengthy periods of time in this type of temporary accommodation facilities (emergency hotels and Safe zones) does not satisfy the requirements of long-term accommodation suited to their specific circumstances, needs and extreme vulnerability. These facilities do not offer the quality standards necessary for the long-term accommodation of unaccompanied children.

146. In the light of the above considerations, the Committee holds that there is a violation of Article 31§1 in respect of unaccompanied refugee and asylum-seeking children.

II. ALLEGED VIOLATION OF ARTICLE 17§1 OF THE CHARTER

147. Article 17§1 of the Charter reads:

Article 17 – The right of children and young persons to social, legal and economic protection

Part I: “Children and young persons have the right to appropriate social, legal and economic protection.”

Part II: “With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

- 1a. to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;
- b. to protect children and young persons against negligence, violence or exploitation;
- c. to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support; “

A – Arguments of the parties

1. The complainant organisations

148. ICJ and ECRE submit that Greece has and is systematically failing to provide accompanied migrant children (on the islands) with the special care and assistance they require and unaccompanied migrant children (both on the mainland and the islands) with the protection and special aid that they need, by not providing sufficient and adequate services to ensure their care and to protect them from negligence, violence and exploitation.

149. As far as migrant children on the islands are concerned, the complainant organisations indicate that due to the living conditions in RIC facilities, families with children and unaccompanied children are living for prolonged periods of time in situations where privacy and security are not assured. Children are therefore exposed to violence, including sexual violence, and exploitation. In addition, the lack of an effective guardianship system deprives unaccompanied children of access to adequate protection, access to information, legal advice and psychological care.

150. As far as unaccompanied migrant children on the mainland are concerned, the complainant organisations underline that as a consequence of the shortage of reception places, a number of unaccompanied children are homeless and unable to meet their basic needs. Some of them become victims of violence, sexual exploitation and harassment, resulting in psychological illnesses and suicide attempts. Due to the

shortage of accommodation places, a number of them also face deprivation of liberty under the guise of “protective custody”. In addition, the lack of an effective guardianship system deprives these children of access to adequate protection, access to information, legal advice and psychological care.

151. With regard to detention of unaccompanied children, the complainant organisations note that the resort to detention has been a consistent practice for many years and stems from the severe accommodation shortage across the country and as well as the severe shortcomings in the child protection system. The detention of these children may be prolonged for periods exceeding several weeks/months pending their transfer to an accommodation facility. For example, in October 2018, the average period of detention of unaccompanied children in North Greece has been reported between 30 days and 3 months. In 2017, this period reached 6 months for a number of unaccompanied children in RIC Fylakio. UAC can be placed in police stations, pre-removal centres or in the Evros RIC at the Greek-Turkish land border (the only RIC in which restriction of movement is applied upon arrival). Detention on the ground of “protective custody” is not subject to a maximum time limit and no assessment of the best interests of the child takes place before or during detention, in breach of national and international law. Furthermore, as repeatedly found by international monitoring bodies (UN Special Rapporteur on the Human Rights of Migrants, CPT, the European Court of Human Rights), detention of unaccompanied children takes place in substandard/inadequate conditions; children are placed with unrelated adults, deprived of access to outdoor facilities, recreational or educational activities. Although multiple international bodies have called for reform and asked Greece to end this practice, neither legislation nor practice has changed in this respect.

152. In connection with the guardianship system, ICJ and ECRE submit that the existing system is not effective. The appointment of a guardian for UAC rests with the Public Prosecutor who acts as a temporary guardian for all unaccompanied children in Greece. In practice, the Public Prosecutor has a merely figurative role as a guardian, since prosecutors are unable to exercise their duties for the large number of unaccompanied migrant children in Greece. Without an effective guardianship system, unaccompanied children do not have representation or access to basic rights such as education and health, and they are thus deprived of the requisite care and protection that they are entitled to under Article 17 of the Charter. Although a new legislation on guardianship was adopted in 2018, the new system has not yet become operational. The secondary legislation was adopted one year after the issuance of the law and the entry into force of the law has been postponed twice (first until 1 September 2019 and then until 1 March 2020). Moreover, the transitional programme mentioned by the Government cannot fill the gap of the non-operation of a guardianship system: as indicated by the Government itself, this programme refers to the appointment of “authorised representatives” who do not have the responsibilities of a guardian.

2. The respondent Government

153. With respect to reception and identification of unaccompanied children at RICs, the Government submits that every RIC informs the local competent Public Prosecutor on the presence of an such children within the RIC, on the procedure followed in order to determine his/her age and on any changes that may occur during the child's stay at the facility. For instance, in the RIC in Lesbos, children are guided by the Secretariat for Unaccompanied Children, which takes record of their requests, informs them on procedural and legal issues, and helps them to collect documents. The Secretariat informs on a regular basis the Public Prosecutor's Office at Mytilini Court of First Instance (as temporary guardian) on children's movements and other important issues.

154. The Government refers to the new regulatory framework of guardianship of unaccompanied children (Law 4554/2018) as well as to the transitional guardianship programme started in January 2019 under which authorised representatives employed by the NGO *METAdrasi* undertook certain delegated responsibilities in respect of those children (see domestic law and practice, above). However, since the transitional guardianship programme with *METAdrasi* could not be extended after December 2019, another programme has been designed pending the full implementation of Law 4554/2018 (whose postponement is under consideration). According to this new programme, EKKA will be outsourcing entities in order to organise and manage a system of "authorised representatives" assigned to unaccompanied children. More precisely, an "authorised representative" is a trained professional authorised by the competent Public Prosecutor to carry out specific duties with regard to the child and to act as his/her legal representative before the authorities.

155. With regard to detention, the Government maintains that RICs are not detention centres. The restriction of freedom, which can be extended by a maximum of 25 days (and an additional 20 days in special cases) according to the law, is the necessary time period for the reception and identification procedures to be completed. However, in practice (specifically referring to the RIC of Moria in Lesbos), this restriction was never applied since procedures were being completed on the same day. From 2017 and onwards, no detention in the Hellenic police pre-removal detention centre (Prokeka Lesbos) has ever been imposed to a child for administrative reasons.

B – Assessment of the Committee

156. The Committee recalls that Article 17 guarantees the right of children, including children in an irregular migration situation and non-accompanied children to care and assistance, including medical assistance and appropriate accommodation (FIDH v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, §36; DCI v. Belgium, Complaint No. 69/2011, op.cit., §82; EUROCEF v. France, Complaint No. 114/2015, op.cit., §§83-94). Article 17 concerns the assistance to be provided by the State where the child is unaccompanied or if the parents are unable to provide such assistance. Application of paragraph 1 (b) of Article 17 is of particular importance,

because failure to apply it will obviously expose a number of children and young persons to serious risks to their lives or physical integrity (DCI v. Belgium, op.cit., 73). In this regard, States Parties must take the necessary and appropriate measures to guarantee the children in question the care and assistance they need and to protect them from negligence, violence or exploitation. A failure to do so poses a serious threat to the enjoyment of their most basic rights, such as the right to life, to psychological and physical integrity and to respect for human dignity (DCI v. Belgium, op.cit., §82).

157. The Committee further recalls that the detention of a child in waiting areas, together with adults, and/or accommodated in hotels, deprived of the assistance of a guardian cannot be in the best interests of the child (EUROCEF v. France, op.cit., §100). The Committee has held, referring to UNCHR observations, that unaccompanied migrant children must be placed as quickly as possible in an appropriate reception structure and their needs must be meticulously assessed. Indeed, immediate assistance is essential and allows assessing material needs of young people, including the need for medical and psychological care, in order to set up a child support plan. This assessment is often crucial for the effectiveness of the right to asylum (DCI v. Belgium, op.cit., §§80-81).

158. The Committee also refers to the United Nations Convention on the Rights of the Child, which has been ratified by all member States of the Council of Europe and must be taken into account when ruling on an alleged violation of Article 17 of the Charter. The Committee considers itself bound by the internationally recognised requirement to apply the best interests of the child principle (see DCI v. the Netherlands, op.cit., §29). The relevant provisions of the United Nations Convention on the Rights of the Child in this context are Article 3 (best interests of the child), Article 20 (special protection and assistance for children temporarily or permanently deprived of their family environment) and Article 22, which deals specifically with the right of refugee and asylum-seeking children to receive appropriate protection. The Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, in their joint general comment (2017) on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, have underlined that when a migrant child is first detected by immigration authorities, child protection or welfare officials should immediately be informed and be in charge of screening the child for protection, shelter and other needs. Unaccompanied and separated children should be placed in the national/local alternative care system, preferably in family-type care with their own family when available, or otherwise in community care when family is not available (§13). Furthermore, for unaccompanied and separated children, a competent guardian should be appointed, as expeditiously as possible, who would serve as a key procedural safeguard to ensure respect for their best interests (§17; see also Committee on the Rights of the Child, General Comment No. 6 (2005), §§20-21 and 33-38).

(i) Accommodation situation and living conditions

159. The Committee notes that the complaint made under Article 17 of the Charter relates both to the accommodation and living conditions of accompanied migrant children on the islands and to the accommodation and living conditions of unaccompanied migrant children both on the islands and the mainland.

160. The Committee has already found a violation of Article 31§2 due to the inappropriate accommodation of accompanied and unaccompanied migrant children on the islands (see paragraph 134 above). It has also found a violation of Article 31§2 in respect of the accommodation of unaccompanied migrant children on the mainland (see paragraph 142 above). Both violations relate to the failure to provide adequate shelter to these children. The Committee recalls that the obligations related to the provision of shelter under Article 17 are identical in substance with those under Article 31§2 (DCI v. the Netherlands, *op.cit.*, §71; see, *mutatis mutandis*, EUROCEF v. France, *op.cit.*, §§173-177). In this connection, the Committee has already found under the reporting procedure that the situation in Greece was not in conformity with Article 17§1 of the Charter on the ground of the inadequate and often unsafe accommodation of unaccompanied migrant children (Conclusions 2019, Greece).

161. The Committee has also found a violation of Article 31§1 due to the accommodation situation of refugee and asylum-seeking children on the islands and of unaccompanied refugee and asylum-seeking children on the mainland (see paragraphs 136 and 146 above). It considers that the lack of sufficient appropriate long-term accommodation suited to these children's needs and vulnerability also comes within the scope of Article 17, insofar as States Parties must guarantee adequate long-term accommodation as part of the care, assistance and protection which is suited to the age and the best interests of the child. Accommodating such children in reception centres or hotels, particularly if it is for long periods of time (i.e. for weeks or even months) and without age-appropriate services, cannot be considered to fulfil the best interests of the child and is contrary to the Charter (see, *mutatis mutandis*, EUROCEF v. France, *op.cit.*, §§92, 97 and 100).

162. For the above reasons, the Committee holds that there is a violation of Article 17§1 of the Charter due to the lack of sufficient appropriate accommodation for accompanied and unaccompanied migrant children.

(ii) Guardianship system

163. The Committee notes the complainant organisations' allegation that the guardianship system for unaccompanied children is not effective. According to Presidential Decree ("PD") 220/2007, the Public Prosecutor acts as a temporary guardian for unaccompanied children, until a permanent guardian is designated. The complainant organisations argue that the prosecutors lack the capacity to exercise their duties in respect of a significant number of unaccompanied children. UNCHR also submits that public prosecutors very rarely take cases to court for a permanent

guardian to be designated. As a result, public prosecutors remain the temporary guardians of a high number of children in respect of whom they do not have the capacity to act.

164. The Committee observes that various Council of Europe and international bodies have over the years expressed concerns about the functioning of the guardianship system for unaccompanied children in Greece (Council of Europe Commissioner for Human Rights, report following his visit to Greece from 8 to 10 December 2008, 4 February 2009, §21; PACE Resolutions 2118 (2016) and 2174 (2017); Special Representative of the Secretary General of the Council of Europe on migration and refugees, Report of the fact-finding mission to Greece and “the former Yugoslav Republic of Macedonia”, 26 April 2016; United Nations Committee on the Rights of the Child, Concluding observations, 2012; United Nations Human Rights Committee, Concluding observations, 3 December 2015; United Nations Committee on the Elimination of Racial Discrimination, Concluding observations, 3 October 2016; United Nations Special Rapporteur on the human rights of migrants, Report on his mission to Greece, 24 April 2017). The European Court of Human Rights has also had the occasion to examine cases against Greece where no legal guardian had been appointed for unaccompanied migrant or asylum-seeking children, a circumstance which had implications for the protection of the child and his/her access to legal remedies (*Rahimi v. Greece*, op.cit., §§88-89 and 120; *H.A. v. Greece*, op.cit., §211; *Sh.D. and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia*, op.cit., §§59-60). The Committee has already examined matters related to the appointment of guardians for unaccompanied migrant children within the context of Article 17§1 (Conclusions 2019, Hungary, Serbia).

165. The Committee considers that an effective guardianship system for unaccompanied and separated migrant children is a pre-condition for ensuring the best interests and the care and assistance of such children, as required by Article 17§1 of the Charter. States Parties should therefore appoint a guardian without undue delay, as soon as an unaccompanied or separated migrant child, including a refugee and asylum-seeking child, is identified. Without a guardian, such children may be exposed to serious protection risks and may remain denied of enjoyment of a number of their rights, including effective access to legal assistance and to the asylum procedure (see, *mutatis mutandis*, *EUROCEF v. France*, op.cit., §§88 and 98). The Committee considers, consistent with the approach of the Committee on the Rights of the Child (General Comment No. 6 (2005), §33), that the guardian should have the necessary expertise in the field of childcare, so as to ensure that the interests of the child are safeguarded and that the child’s needs are appropriately covered by, *inter alia*, the guardian acting as a link between the child and the authorities, agencies and individuals who provide the care. With regard to the appointment, responsibilities and tasks of guardians, the Committee is of the view that States Parties to the Charter should be guided by the principles contained in the Recommendation of the Committee of Ministers of the Council of Europe to member States on effective guardianship for unaccompanied and separated children in the context of migration, adopted on 11 December 2019 (CM/Rec(2019)11, Appendix, in particular Principles 2 and 3).

166. The Committee notes the adoption in 2018 of a new law on guardianship (Law 4554/2018), which foresees that all unaccompanied children in Greece are appointed a professional guardian, which will be selected from a registry of professional guardians created under the National Centre for Social Solidarity (EKKA). It notes however that the entry into force of this law was postponed until 1 March 2020. Meanwhile, a transitional programme started in January 2019 and bringing together UNCHR, the Greek Ministry of Labour and Social Affairs and the Greek NGO *METAdrasi*, was put in place. According to this programme, 55 authorised representatives, gradually employed by this NGO, would undertake certain delegated responsibilities in respect of unaccompanied children. The Committee notes from the Government's submissions that this agreement could not be extended after December 2019 and that a new transitional programme in which EKKA will be outsourcing the management of authorised representatives assigned to minors has been designed. In any event, the Government concedes that the procedures and actions needed for EKKA to be fully capable of implementing the relevant provisions of the guardianship law have exceeded the timeframe and that a further postponement of their implementation is under consideration.

167. In this regard, the Committee considers that the delays in the implementation of the new law on guardianship make it impossible to regard the new system as effective for the purposes of addressing the concerns raised with regard to Article 17§1. Although temporary solutions with NGOs/civil society have been designed to fill this gap, the Committee recalls that the implementation of the Charter requires States Parties not merely to take legal action but also to make available the resources and to introduce the operational procedures necessary to give full effect to the rights specified therein (*International Movement ATD Fourth World v. France*, Complaint No. 33/2006, decision on the merits of 5 December 2007, §61). In this connection, it considers that States Parties to the Charter should allocate adequate resources (financial and human) to ensure an effective guardianship system for unaccompanied migrant children.

168. In the light of the above, the Committee holds that Greece, by failing to ensure that effective assistance is provided to unaccompanied and separated migrant children, through the appointment of legal guardians, has failed to satisfy Article 17§1 of the Charter.

(iii) Detention

169. The Committee notes the complainant organisations' submission that the resort to detention of unaccompanied migrant children has been a consistent practice in Greece and stems from the shortage of accommodation places for such children. The detention on the ground of "protective custody" is not subject to a maximum time limit and no assessment of the best interests of the child takes place before or during detention. UNCHR also submits that asylum-seeking children can be detained in police stations or pre-removal centres pending referral to an appropriate reception facility, and that the number of detained children for prolonged periods has increased in 2018 and 2019.

170. The Committee notes that the practice of detaining unaccompanied migrant and asylum-seeking children under the regime of “protective custody” has been criticised by numerous Council of Europe and international bodies (Council of Europe Commissioner for Human Rights, report following her visit to Greece from 25 to 29 June 2018, 6 November 2018, §§33 and 60; Committee of Ministers of the Council of Europe, Decision CM/Del/Dec(2019)1348/H46-9, 6 June 2019, and Decision CM/Del/Dec(2020)1383/H46-7, 1 October 2020, concerning the execution of judgments by the European Court in cases against Greece; PACE Resolutions 2118 (2016) and 2174 (2017); Special Representative of the Secretary General of the Council of Europe on migration and refugees, Report of the fact-finding mission to Greece and “the former Yugoslav Republic of Macedonia”, 26 April 2016; United Nations Committee against Torture, Concluding observations, 3 September 2019; United Nations Special Rapporteur on the human rights of migrants, Report on his mission to Greece, 24 April 2017, §§99-104; United Nations Working Group on Arbitrary Detention, report on its visit to Greece (2-13 December 2019), 29 July 2020, §§65-72).

171. The European Court of Human Rights has found that the detention of unaccompanied migrant children in border posts and police stations under “protective custody”, resulting from an automatic application of Article 118 of PD 141/1991, amounted to an “unlawful” detention within the meaning of Article 5§1 of the European Convention and degrading treatment contrary to Article 3 of the Convention (see *H.A. v. Greece*, op.cit., §§166-170 and 201-208, concerning periods between 21 to 33 days; *Sh.D. and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia*, op.cit., §§48-51 and 69). Recently, the European Court has also issued decisions under Rule 39 of the Rules of Court indicating to the Greek Government to transfer unaccompanied migrant children from police stations to accommodation centres. In the same vein, the CPT has repeatedly considered that the practice of detaining unaccompanied children under “protective custody” in police and border guard stations or in other places of deprivation of liberty (RICs, pre-removal centres) is unacceptable and has recommended that the Greek authorities put an end to such practice (CPT, Reports of 19 February 2019, §§121-129, 9 April 2020, §114, and 19 November 2020, §46).

172. The Committee recalls that it has already found, referring to the position of other Council of Europe bodies, that unaccompanied children should not be detained, and that their detention cannot be justified solely on the grounds that they are unaccompanied or separated, or on the basis of their migratory or residence status, or lack thereof (*EUROCEF v. France*, op.cit., §99; Conclusions 2019, Greece, Article 17§1). The Committee notes that this position also reflects the well-established position of the United Nations Committee on the Rights of the Child and its interpretation of Article 37(b) of the Convention of the Rights of the Child (General comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin, §61; Joint General Comment No. 23 (2017), §10).

173. The Committee notes that the Government does not comment on the detention of unaccompanied children on the ground of “protective custody”. It notes however that according to the complainant organisations’ submissions and other information available to it, detention of unaccompanied children on this ground can take place in police stations, border guard stations, pre-removal centres and RICs. In respect of the latter, unaccompanied children may be held in “protective custody” at Fylakio RIC (Greek-Turkish land border) beyond the maximum 45-day-limit to complete the reception and identification procedure, pending their transfer to appropriate accommodation facilities. The CPT has reported that certain unaccompanied children were held under “protective custody” at this RIC for periods ranging from five to ten months (CPT, Report of 19 February 2019, §125).

174. The Committee observes that the legal basis for placing children under “protective custody”, PD 11/1991, does not provide for any time-limit, which may lead to situations where the deprivation of liberty of such children can be prolonged for lengthy periods. In addition, unaccompanied children detained in police custody have generally no access to recreational or educational activities or psycho-social support (CPT, 2019). They may be held together with unrelated adults (several sources, including UN Working Group on Arbitrary Detention, 2020).

175. The Committee notes that according to data from EKKA, as of 15 May 2020, there were 274 children (unaccompanied, including separated children) held in protective custody in Greece. This number shows that there has been an increase of children held in protective custody compared to the year 2018. For instance, as of 30 September 2018, there were 90 children held in protective custody.

176. The Committee considers that this situation is all the more problematic because it results from the shortage of appropriate accommodation places to cover the needs of all unaccompanied migrant children in Greece, particularly on the mainland, as described above. Detention in police stations or in closed facilities, even for short periods of time, cannot be an alternative to proper shelter and accommodation suited to the age and the needs of such children.

177. The Committee holds that there is a violation of Article 17§1 of the Charter due to the detention of unaccompanied migrant children under the protective custody scheme.

III. ALLEGED VIOLATION OF ARTICLE 7§10 OF THE CHARTER

178. Article 7§10 of the Charter reads:

Article 7 – Right of children and young persons to protection

Part I: “Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed.”

Part II: “with a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:

...

10. to ensure special protection against physical and moral dangers to which children and young persons are exposed, ...”.

A – Arguments of the parties

1. The complainant organisations

179. ICJ and ECRE submit that migrant children on the islands (both accompanied and unaccompanied) are not protected against violence, exploitation and moral hazards. As a direct consequence of the inappropriate and over-crowded conditions on the RICs, migrant children witness riots, fights and drug-selling and are victims of sexual and gender-based violence and abuse. They allege that the unavailability of adequate night patrols, the entire absence of security personnel in the evenings and at night and dimly lit toilet and shower areas are long-standing issues on the islands, which add a heightened risk of sexual and gender-based violence within the RICs and areas adjacent to them. To illustrate, they refer to cases of rape and sexual abuse of children in the RIC of Moria, Lesbos (MSF). They also point out that some RICs lack separated safe places for unaccompanied children (i.e. Vathy RIC in Samos) and/or that since they operate as open centres at daytime there are no checks of possible unregistered persons, which is particularly worrying with regard to the protection of unaccompanied children. They report that on 24 August 2019, in Moria’s safe zone, a 15-year old Afghan boy was killed and two other teenage boys injured after a fight broke out.

180. The complainant organisations further submit that unaccompanied migrant children on the mainland face being homeless, living in the streets and public parks, living in sub-standard conditions and/or risk being placed into detention on account of the shortage of suitable accommodation for them. These children also become victims of violence, sexual exploitation and harassment. They refer specifically to reported cases of sexual abuse, attacks and robberies of unaccompanied migrant children (particularly boys) living in the parks of Athens (UNCHR).

181. The complainant organisations also refer to the lack of an effective guardianship system for unaccompanied migrant children, for both those living on the islands and for those on the mainland.

2. The respondent Government

182. The Government states that the relevant authorities responsible for receiving and examining an asylum application are obliged to ensure that children's accommodation needs are met, by placing them either with adult relatives, a foster-family or other accommodation facilities suitable for children, provided that such an accommodation solution protects the child from trafficking and exploitation.

183. The Government indicates that in safe zones/safe areas operating in the RICs, services such as 24-hour presence of specialised care staff, caregivers' services, and psychosocial and psychological support are provided. It provides the breakdown of staff and services available to unaccompanied and separated minors in the safe areas/safe zones that are already operational in the RICs of Lesbos, Chios, Leros and which are under construction in the RICs of Samos and Kos. As regards specifically the RIC of Moria, the Government points out that children with particularly vulnerable characteristics or with concerns about their safety at the centre were prioritised and usually transferred within three months to more appropriate accommodation facilities.

B – Assessment of the Committee

184. The Committee recalls that pursuant to Article 7§10 of the Charter, States Parties have undertaken to protect children not only against the risks and forms of exploitation that result directly or indirectly from their work, but also against all forms of exploitation (DCI v. Belgium, *op.cit.*, §94).

185. In particular, States Parties must prohibit the use of children in forms of exploitation such as sexual exploitation, domestic/labour exploitation, including trafficking for the purposes of labour exploitation, begging, or the removal of organs (Conclusions 2004, Bulgaria, Article 7§10). They must also take measures to prevent and assist street children. In all these cases, States Parties must ensure not only that they have the necessary legislation to prevent exploitation and protect children and young persons, but also that this legislation is effective in practice (Conclusions 2019, Greece, Article 7§10).

186. The Committee notes that the persistent failure/incapacity to provide appropriate accommodation and care to migrant children (whether or not accompanied by their families) has the effect of exposing the children in question to very serious physical and moral hazards, resulting from life on the street, which can include trafficking, exploitation through begging and sexual exploitation. This failure shows that the State Party concerned has not taken the necessary measures to guarantee these

children the special protection against physical and moral hazards required by Article 7§10, thereby causing a serious threat to their enjoyment of the most basic rights, such as the right to life, to psychological and physical integrity and to respect for human dignity (DCI v. Belgium, *op.cit.*, §§97-98; EUROCEF v. France, *op.cit.*, §§137-139).

187. The Committee has also examined this issue under the reporting procedure with respect to unaccompanied and separated minors in Greece, given the links between the lack of suitable accommodation for these children and their exposure to violence, exploitation and trafficking (Conclusions 2019, Greece, Article 7§10).

188. According to the information available and the complainant organisations' submissions, there have been reported cases of sexual and gender-based violence and abuse perpetrated against migrant children in Greece (Council of Europe Commissioner for Human Rights, report following her visit to Greece from 25 to 29 June 2018, 6 November 2018, §§ 34-35, concerning the RIC of Moria on Lesbos). As far as the situation on the islands is concerned, conditions such as the lack of privacy and separation from unrelated adults and the lack of sufficient security and lighting within the RICs have been pointed out as factors increasing the risks of exposure to such violence (see, for instance, United Nations Special Rapporteur on the human rights of migrants, report on his mission to Greece, 24 April 2017, §65; see also European Union Agency for Fundamental Rights (FRA), Update of the 2016 Opinion of the FRA on fundamental rights in the 'hotspots' set up in Greece and Italy, February 2019, Part II, point 4). The Committee notes from the Government's submissions that in some RICs (in Samos and Kos) there were still no safe areas/zones operational for unaccompanied children. Insecurity is also linked to the problem of overcrowding. In this regard, for instance, UNCHR reports that 40 unaccompanied children living in the temporary arrivals' hall among adults at the RIC of Moria went missing in February 2018.

189. With regard more specifically to accompanied or unaccompanied girls, the Committee considers that these children are exposed to a heightened risk of becoming subject to sexual and gender-based violence. States Parties should therefore put in place specific preventive measures to address their needs in terms of living space, privacy and security within reception centres and other accommodation facilities, taking into account their extreme vulnerability. They should also provide for gender-sensitive reporting procedures and support services allowing said children to report possible cases of violence and abuse and ask for assistance in a safe manner.

190. The Committee further notes from the parties' submissions that there have been allegations of sexual exploitation of unaccompanied children on the mainland, in particular of those living on the streets (e.g. boys engaging in prostitution). The Committee considers that the lack of an effective guardianship system for these children is an aggravating factor, given that such children may face more obstacles in

reporting cases of violence and sexual exploitation to the authorities without the assistance of a guardian. The Committee notes in this respect that GRETA urged the Greek authorities to put in place a guardianship system for children without parental care, including unaccompanied children, as a measure to reduce children's vulnerability to trafficking (GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Greece, first evaluation round, 18 October 2017, §125).

191. The Committee does not have any information at its disposal to indicate that the authorities do not react properly to specific allegations of sexual violence, abuse, sexual exploitation or trafficking concerning migrant children, for instance by opening a criminal investigation into such allegations. It considers however that the persistent failure to provide appropriate accommodation and care to a significant proportion of such children exposes them to serious physical and moral dangers, which can consist of abuse, violence, including sexual and gender-based violence, sexual exploitation and trafficking.

192. Consequently, the Committee holds that Greece, by failing to take the necessary measures to guarantee the children concerned by the complaint the special protection against physical and moral dangers to which they are exposed, has failed to satisfy Article 7§10 of the Charter.

IV. ALLEGED VIOLATION OF ARTICLE 17§2 OF THE CHARTER

193. Article 17§2 of the Charter reads:

Article 17 – The right of children and young persons to social, legal and economic protection

Part I: "Children and young persons have the right to appropriate social, legal and economic protection."

Part II: "With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

(...)

2. to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools. "

A – Arguments of the parties

1. The complainant organisations

194. ICJ and ECRE submit that Greece systematically fails to provide migrant children on the islands with access to free primary and secondary education and to encourage regular attendance at schools. According to the complainant organisations, more than 85% of all migrant children in the islands do not attend primary or secondary

education. Out of 2,500 migrant children of school age living on the islands, only 300-400 children were reported to have been enrolled at public schools at the end of October 2017. In September 2018, migrant children in RIC facilities in Lesbos, Chios and Samos did not have access to formal education, while less than 25% of the migrant children remaining at the RIC facilities in Leros and Kos had access to formal education.

195. The complainant organisations state that since formal education (provided through two governmental programs, namely Reception Facilities for Refugee Education (DYEP) afternoon classes and Zones of Educational Priorities (ZEP) morning integration classes) on the islands reaches a minority of migrant children, many of whom reside outside the RICs, the majority of migrant children rely on non-formal education operated by NGOs. This non-formal education sometimes only amounts to four hours of classes per week, compared to the 30 hours per week a child would receive in formal education. There is also a lack of motivation to attend these classes since the lessons do not lead to a formal certificate or qualification which will be recognised by a public educational institution. The approval from a parent or a guardian to go to and attend class is a serious issue for unaccompanied children, who have neither and are therefore, in some cases, unable to attend non-formal educational classes.

196. The complainant organisations stress that the Government has failed to provide any specific data and information, for instance as to the percentage of school attendance on the islands for migrant children or the number of DYEP on the islands. They consider that the situation that they denounce has been most recently confirmed by UNCHR, according to which more than three quarters of the 4,656 school-aged children on the Greek islands who are asylum seekers and live in reception centres do not attend school (August 2019).

2. The respondent Government

197. The Government notes that according to the legislation (Article 13 of Law 4540/2018), children citizens of third countries or stateless persons, while staying in the country, have access to the public education system, under conditions similar to those applicable to Greek citizens, and shall be entitled to facilitations relating to registration, as long as no pending expulsion measure is taken against them or against their parents.

198. The Government explains that taking into account the special needs of refugee populations, Reception Units for the Education of Refugee Children (DYEP) operate in the context of the standard education system and apply specialised curricula of limited duration. Under this programme, children familiarise with the school environment and develop abilities and skills that will help them through their school life. Other children, following a Greek language test, study in Primary and Secondary Education Units that form part of the Educational Priority Zones. In these school units “Reception classes”

may operate in order to offer language and learning assistance to pupils who have minimum knowledge of Greek. To illustrate, for the 2018-19 school year, the total number of refugee pupils registered in all educational scales (kindergarten, primary and secondary school) throughout Greece amounted to 12,867 children: 4,577 in DYEP classes, 4,050 in school units with Reception classes and 4,240 in school units

without reception classes. The Government also refers to the different existing educational programmes (DYEP) in Lesbos, Kos and Chios for the year 2019-20.

B – Assessment of the Committee

199. The Committee recalls that Article 17§2 of the Charter requires States Parties to establish and maintain an education system that is both accessible and effective. In order for there to be an accessible and effective system of education there must be *inter alia* a functioning system of primary and secondary education provided free of charge, including an adequate number of schools fairly distributed over the geographical area. Class sizes and the teacher pupil ratio must be reasonable. Measures must be taken to encourage school attendance and to actively reduce the number of children dropping out or not completing compulsory education and the rate of absenteeism (Conclusions 2015, Serbia).

200. Equal access to education must be ensured for all children. In this respect particular attention should be paid to vulnerable groups such as children from minorities, children seeking asylum, refugee children, children deprived of their liberty, etc. Children belonging to these groups must be integrated into mainstream educational facilities and ordinary educational schemes. Where necessary, special measures should be taken to ensure equal access to education for these children (EUROCEF v. France, Complaint No. 114/2015, op.cit., §123; Conclusions 2003, Bulgaria; Conclusions 2011, Ukraine). In addition, so that the right to education is implemented as an actual, effective right, a general environment must be created in which it can be enjoyed, namely through the stable accommodation of relatives and families in housing of a reasonable standard, ease of access to educational establishments in terms of transport and proximity, and a protective legal framework and security (European Roma and Travellers Forum (ERTF) v. France, Complaint No. 119/2015, decision on the merits of 5 December 2017, §73).

201. The Committee further recalls that States Parties are required, under Article 17§2 of the Charter, to ensure that children irregularly present in their territory have effective access to education in keeping with any other child (Conclusions 2011, Statement of Interpretation on Article 17§2; EUROCEF v. France, Complaint No. 114/2015, op.cit., §§118-125; Conclusions 2019, Hungary, Article 17§2). Access to education is crucial for every child's life and development. The denial of access to education will exacerbate the vulnerability of an unlawfully present child (Médecins du Monde – International v. France, Complaint No. 67/2011, decision on the merits of 11 September 2012, §128; Conclusions 2011, Statement of Interpretation on Article 17§2).

202. The Committee considers that Article 17§2 should also be read taking into account Article 28 of the UN Convention on the Rights of the Child, which guarantees the right of the child to education, and its interpretation by the Committee on the Rights of the Child (see General Comment No. 6 (2005), §41). The UN Committee also stated, together with the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (Joint General Comment (2017), §59), that all children in the context of international migration, irrespective of status, shall have full access to all

levels and all aspects of education, including early childhood education and vocational training, on the basis of equality with nationals of the country where those children are living. The principle of equality of treatment requires States to eliminate any discrimination against migrant children and to take, where necessary, targeted measures, including additional language education, additional staff and other intercultural support (*ibid.*, §62).

203. The Committee notes that according to the complainant organisations, more than 85% of all migrant children on the islands do not attend primary or secondary education. Formal education on the islands reaches a minority of children, many of whom reside outside the RICs. This is confirmed by UNCHR, according to which there are significant constraints for children to access formal education and only a limited number of children seeking protection residing in the RICs attend public schools on the islands. According to a UNCHR report of August 2019, more than three quarters of the 4,656 school-aged children on the Greek islands who are asylum seekers and live in reception centres do not attend school.

204. The Committee also notes the concerns expressed by several Council of Europe and international bodies about access to education for migrant and asylum-seeking children, particularly on the islands (Council of Europe Commissioner for Human Rights, report, 6 November 2018, §§52 and 62, referring to testimonies gathered in Lesbos by the Commissioner and a Human Rights Watch report according to which “fewer than 15% of more than 3,000 school-age asylum-seeking children on the islands were enrolled in public school at the end of the 2017-2018 school year” ; United Nations Special Rapporteur on the human rights of migrants, report on his mission to Greece, 24 April 2017, §93; FRA, Update of the 2016 Opinion on fundamental rights in the ‘hotspots’ set up in Greece and Italy, February 2019, p. 43). The Committee itself has already noted some of these concerns under the reporting procedure and asked the Greek authorities what measures have been taken to ensure that all migrant and asylum-seeking children have effective access to education (Conclusions 2019, Greece, Article 17§2).

205. The Committee takes note of the Government’s efforts to guarantee the enjoyment of migrant children’s right to education in accordance with the law, through the implementation of education programmes such as the Reception Units for the Education of Refugee Children (DYEP). This programme of afternoon preparatory classes is designed for children between the ages of four and fifteen in public schools located near the reception centres. Although the Government refers in its additional

observations to the existence of such programme on three of the five islands (Lesvos, Kos and Chios), the figures provided on the number of children enrolled under such programme and other programmes (e.g. reception classes in school units that form part of the Education Priority Zones) refer to the situation across the country and not specifically to migrant children residing on the islands, which are the only children concerned by the complaint submitted with regard to Article 17§2. The Government has not submitted any data on the percentage of enrolment and/or school attendance among these children.

206. The Committee notes from FRA (2019) that the implementation of the DYEP programme on the islands has been slow. On most islands, the operation of the programme started in 2018 or in the beginning of 2019. Although DYEP kindergartens started operating inside the RICs, FRA observed during its visit to Samos in December 2018 that only 10 children were enrolled. FRA also indicated that with the exemption of some cases in the hotspot of Leros, children above the age of compulsory schooling (16-17) face serious difficulties in accessing public schools.

207. The Committee is of the view that the non-formal education arrangements provided by non-state actors (e.g. NGOs) cannot be a substitute to the integration of migrant children in the public education system, regardless of the duration of the stay of those children on the islands. Access to formal education is crucial for vulnerable children such as those concerned by the complaint, who may stay for months in poor living conditions on the reception centres located on the islands.

208. The Committee considers that in the absence of specific data provided by the Government contesting the information referred to above, it cannot be established that migrant children have effective access to education while residing on the islands.

209. Therefore, the Committee holds that there is a violation of Article 17§2 of the Charter in respect of migrant children on the islands.

V. ALLEGED VIOLATION OF ARTICLE 11§§ 1 AND 3 OF THE CHARTER

210. Article 11§§ 1 and 3 of the Charter reads:

Article 11 – The right to protection of health

Part I: “Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.”

Part II: “With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed inter alia:

1. to remove as far as possible the causes of ill-health; (...)
3. to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.”

A – Arguments of the parties

1. The complainant organisations

211. ICJ and ECRE argue that Greece systematically fails to take steps to facilitate access to health care and services, to address the causes of ill-health and to prevent diseases and the worsening of illnesses among migrant children. The absence of shelter and the resultant living conditions has been documented as a trigger and/or amplifier of physical and mental ill-health and disease amongst these children. These conditions are exacerbated by the lack of vulnerability assessment and a lack of access to primary, preventative, and in some cases, emergency health care, including psychological support.

212. The complainant organisations refer specifically to the limited provision of primary, paediatric and preventative (including vaccinations) healthcare and psychological care and an insufficient number of medical personnel, both in the RICs and also in hospitals in the islands. Shortage in medical staff leads to severe delays in identifying medical and vulnerability issues. The most commonly treated illnesses (i.e. respiratory tract infections, watery diarrhoea, lice, scabies and other skin infections) directly originate from the deplorable living conditions on the islands. To illustrate, the complainants refer to a decision given by the Prefecture of the North Aegean in September 2018 who noted that due to, *inter alia*, an uncontrolled leak of sewage the situation in Moria RIC (Lesvos) “was considered a hazard to public health and the environment in general” and that “severe overcrowding... result[s] in a grave hazard of disease transmission”. In addition, the mental health status of many (particularly unaccompanied) migrant children who have previously experienced forms of violence and trauma in their lives is aggravated by these conditions, leading to depression, self-harm and suicide attempts (according to MSF, 2017: 15 suicide attempts by asylum seekers every month in Moria).

213. The complainant organisations note that the living conditions that unaccompanied migrant children face on the mainland, whether on the streets, in detention (with reported shortages of medical staff and health care supplies) or in inappropriate housing arrangements, also lead to severe physical and mental health illnesses, including depression, self-harm and suicide attempts.

214. In reply to the Government’s submissions on this point, ICJ and ECRE state that the insufficient provision of medical and psychosocial services in the RICs is largely documented by several observers (Council of Europe Commissioner on Human Rights, UNCHR, Greek Ombudsman, FRA) and is not refuted by the information provided by the Government, which does contain any data on the number of children who requested medical assistance and on their access to such assistance, the type of assistance or the waiting time. They refer specifically to the Greek Ombudsman’s reports and statements (14 June 2019 and 10 September 2019), in which the

Ombudsman has criticised the lack of psychiatric care for children residing in RICs, the absence of paediatricians and child psychologists, as well as the administrative obstacles in issuing a Social Security Number (AMKA) (a prerequisite for accessing healthcare) for asylum seekers, including children. They finally refer to the FRA update from February 2019 on the Opinion on fundamental rights in the 'hotspots' set up in Greece and Italy, according to which there were only 10 paediatricians working in the public healthcare institutions on all five Eastern Aegean islands taken together. Although the Greek authorities have attempted to deploy more medical staff to the islands, including within the hotspots, through the project PHILOS, the results of the recruitment procedures have been disappointing (i.e. only 3 successful applicants in 2019 for the call of 17 positions for general practitioners to work in the hotspots). The complainant organisations refer to the number of medical staff in RIC facilities on the islands as of May 2019.

2. The respondent Government

215. The Government concedes that the response to the urgent healthcare needs of refugees and migrants is a challenge for the healthcare system that does not have sufficient resources and staff and is already overwhelmed. In spite of this, the health needs of both unaccompanied and accompanied refugee and migrant children are fully covered by the public health system, in accordance with the law (Article 33 of Law 468/2016).

216. From August 2017, the main action of the Ministry of Health for dealing with the health and psychosocial needs of the refugee population was the PHILOS program ("Integrated Emergency Health Intervention for the Refugee Crisis"), which included the improving of health conditions at the points of entry into the islands of Lesbos, Kos, Chios, Samos and Leros. The activities were focused on the population of 25 centres that existed in the mainland and at all five RICs. The population had access to first aid through 25 medical posts and to referral services with eight mobile units. The Government provides figures on the number of staff (doctors, nurses, social workers, psychologists, mediators, midwives) hired specifically through the PHILOS program for each of the 5 RICs in the islands, as well as on the healthcare provided to children by the hospitals on the islands in 2017 and 2018.

217. In its additional observations, the Government notes that according to the new law (Law 4636/2019), the third stage of the reception and identification procedure is registration and medical screening. In particular, the head of the centre or unit, after a reasoned recommendation by the competent medical staff of the centre, shall refer persons belonging to vulnerable groups to the relevant social support or protection body as appropriate. A copy of the medical screening and psychosocial support file shall be sent to the head of the appropriate body. The Government provides a breakdown of the type of services and the number of physicians, psychologists, nurses

and social workers working in each of the five RICs on the islands (as of January 2020), including staff recruited under the PHILOS 2 program and military doctors.

B – Assessment of the Committee

218. The Committee recalls that the right to protection of health includes the right of access to health care, and that access to health care must be ensured to everyone without discrimination. This implies that healthcare must be effective and affordable to everyone, and that vulnerable groups at particularly high risk, such as homeless persons, persons living in poverty, older persons, persons with disabilities, persons living in institutions, persons detained in prisons, and persons with an irregular migration status must be adequately protected (see, *mutatis mutandis*, Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020, regarding the healthcare measures put in place in a pandemic). It also requires that the number of health care professionals and equipment must be adequate.

219. The Committee considers that the most relevant provisions for the purposes of this complaint are Article 11§§1 and 3, according to which States Parties have undertaken to take appropriate measures designed, inter alia, to remove as far as possible the causes of ill-health, and to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.

220. The Committee recalls that the right to the protection of health guaranteed in Article 11 of the Charter complements Articles 2 and 3 of the European Convention on Human Rights, and that the rights relating to health embodied in the two treaties are inextricably linked, since “human dignity is the fundamental value and indeed the core of positive European human rights law – whether under the European Social Charter or under the European Convention on Human Rights – and healthcare is a prerequisite for the preservation of human dignity” (FIDH v. France, Complaint No. 14/2003, op.cit., §31). The Committee also refers to the position of the Committee on the Rights of the Child and its interpretation of Article 24 of the Convention on the Rights of the Child, which safeguards the right of the child to the enjoyment of the highest attainable standard of health. According to the Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, every migrant child should have access to health care equal to that of nationals, regardless of their migration status. This includes all health services, whether preventive or curative, and mental, physical or psychosocial care, provided in the community or in health-care institutions (Joint general comment No. 23 (2017), par. 55). In addition, Article 39 of the Convention on the Rights of the Child sets out the duty of States to provide rehabilitation services to children who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or armed conflicts.

221. The Committee has already found that the persisting incapacity of reception facilities to accommodate migrant children, with the consequence that a significant number of such children are forced into life on the streets, exposes these children to increased threats to their health and their physical integrity, which are the result of a

lack of housing or foster homes. Providing migrant children with shelter and appropriate accommodation is a minimum prerequisite for attempting to remove the causes of ill-health among these minors (including epidemic, endemic or other diseases) and a failure to do so may lead to a violation of Article 11§§1 and/or 3 of the Charter (see *DCI v. Belgium*, Complaint No. 69/2011, *op.cit.* §§115-118, and *EUROCEF v. France*, Complaint No. 114/2015, *op.cit.*, §§152-155).

222. The Committee further notes that the link between access to shelter, sanitation, adequate housing, and health has been highlighted by both the Committee on the Rights of the Child (General Comment No. 15 (2013): the right of the child to the enjoyment of the highest attainable standard of health (Art. 24), §49) and the UN Committee on Economic, Social and Cultural Rights (General Comment No. 14: the right to the highest attainable standard of health (Art. 12), 11 August 2000, §§3, 4, 11, 36 and 43).

223. Referring to its findings under Article 31§2 and 17§1 above, the Committee considers that the accommodation situation of accompanied and unaccompanied migrant children, including unaccompanied children living on the streets, exposes these children to increased threats/risks to their health, physical and psychological integrity. The Committee notes from the information and examples provided by the complainant organisations that the most commonly treated illnesses among these children (e.g. respiratory tract infections, watery diarrhoea, skin infections, depression, mental health deterioration leading to self-harm and suicide attempts) are linked to their living conditions (overcrowding, sanitation and hygiene conditions on the islands and homelessness and precarious housing arrangements on the mainland).

224. The Committee notes that according to ICJ and ECRE, these conditions are exacerbated by the lack of vulnerability assessment and a lack of access to primary, preventative and in some cases, emergency health care. This is due to the shortage of medical facilities and personnel on the islands (both at the RICs and in hospitals). UNCHR also point to serious delays in the medical and psychosocial assessment of children at the RICs and to the lack of access to medical or psychosocial care for children outside the long-term care system on the mainland.

225. The Committee notes that some of these allegations are supported by the findings of Council of Europe and other bodies. The Commissioner for Human Rights stated that access to health care services appeared to be particularly difficult in the overcrowded reception camps, especially on the Aegean islands, and that the number of medical staff working in the RICs was clearly insufficient to meet the needs (Report following her visit to Greece, 6 November 2018, §§41-42). During her last visit to Greece (31 October 2019), including to reception facilities in Lesbos and Samos, the Commissioner referred to a “desperate lack of medical care and sanitation in the vastly overcrowded camps” she had visited and recommended the strengthening of the capacities of local hospitals, the setting up of *ad hoc* medical facilities in the camps and increasing the number of health care professionals. Similarly, the UN Special

Rapporteur on the human rights of migrants observed, following his visit to Greece in 2016, that access to a medical doctor and medical staff was insufficient in reception centres, particularly for vulnerable groups, referring in particular to a lack or insufficiency of secondary health care and mental health care (Report, 24 April 2017, §64). According to the EU Agency for Fundamental Rights (Update of the 2016 Opinion, *op.cit.*, February 2019), the capacity of doctors and psychologists on the islands remains stretched and the lack of paediatricians persists (i.e. only 10 paediatricians working in the public healthcare institutions on all five islands taken together).

226. The Committee notes that efforts have been made by Greece to deploy more medical staff to the islands, including within the RICs, through the PHILOS programme. However, according to the most recent information available, the results of the recruitment procedures have not yet met the health care needs of the migrant population living on the islands (FRA, 2019). The number of doctors and medical staff working within the RICs on the islands appears insufficient for the number of migrants residing in them. Moreover, according to the Greek Ombudsman (10 September 2019) and UNCHR (August 2019), access to health care is further hindered by administrative obstacles in issuing Social Security numbers to asylum seekers.

227. The Committee stresses the importance of effective medical screening and psychosocial support of migrant and asylum-seeking children upon arrival. Such screening is indispensable for identifying those children with health problems, including mental health problems, and transmissible diseases. A shortage in doctors and medical staff within reception facilities leads to delays in the medical and psychosocial assessment of children, with the risk that health-related problems resulting from the poor living conditions prevailing in those centres or the transmission of diseases remain undetected and arise later.

228. With regard to unaccompanied migrant children on the mainland, the Committee notes that there are no precise data in the complaint or in the parties' submissions showing specific shortcomings in the provision of health care on the mainland. However, it has been reported that unaccompanied children detained under "protective custody" on the mainland (either at the Fylakio RIC or in pre-removal centres and police stations) are not provided with psycho-social support (CPT, Report on the visit to Greece carried out from 10 to 19 April 2018, 19 February 2019, §§125-127). In any event, the Committee considers, referring also to its above findings under Article 17§1 on this particular issue, that detention of unaccompanied children under that scheme has a negative impact on such children's health and can undermine their psychological and physical well-being, regardless of the conditions in which such detention takes place.

229. The Committee notes that the final submissions from parties were received prior to the COVID-19 pandemic and the Committee makes no finding with regard to the measures taken by Greece to address the COVID-19 pandemic situation under Article 11 or any other article addressed in this decision. The Committee notes, however, that the shortcomings in healthcare experienced by the children whose rights are the

subject of this complaint risk being exacerbated/compounded by the COVID-19 situation (see Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020).

230. In the light of the above, the Committee holds that Greece, by failing to provide appropriate accommodation and sufficient health care to accompanied and unaccompanied migrant children on the islands, and appropriate shelter to unaccompanied migrant children on the mainland, with the result that some of these children are forced to live on the streets or are held in detention under “protective custody”, has breached Article 11§§1 and 3 of the Charter.

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CHARTER

231. Article 13 of the Charter reads:

Article 13 – The right to social and medical assistance

Part I: “Anyone without adequate resources has the right to social and medical assistance.”

Part II: “With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

- 1 to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;
- 2 to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;
- 3 to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;
- 4 to apply the provisions referred to in paragraphs 1, 2 and 3 of this Article on an equal footing with their nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.”

A – Arguments of the parties

1. The complainant organisations

232. ICJ and ECRE submit that Greece is violating Article 13 of the Charter due to its failure to provide material, social and medical assistance necessary for migrant children, which includes an effective guardianship, medical or psychological care, provision of shelter and other basic needs.

233. The complainant organisations argue that migrant children on the islands are either deprived or face severe delays in receiving the basic provision of shelter, food, access to health services and facilities. Reports have documented a shortage in food leading to rationing and queues (Commissioner for Human Rights, MSF).

Shortcomings in identifying medical and vulnerability issues means that migrant children are not integrated into a child-welfare infrastructure and their needs are left unaddressed. In addition, unaccompanied children do not have access to adequate protection and legal advice due to the ineffective guardianship system in Greece.

234. According to the complainant organisations, the living conditions of unaccompanied migrant children on the mainland, coupled with the limited provision of health care and psychological care and an ineffective guardianship system, also amount to a failure to provide the material, social and medical assistance that these children require.

2. The respondent Government

235. The Government indicates that private companies that have signed contracts with the Ministry of National Defence provide food services at the RICs. The RIS personnel contribute to the distribution and control of food portions. The said contracts provide that every beneficiary shall be provided with three meals on a daily basis while provision is made for special diet for those who suffer from chronic diseases, children and pregnant women. Furthermore, referring specifically to the RIC Moria (Lesvos), the Government adds that children are offered other necessities upon their arrival that are renewed on a weekly (personal hygiene products) and monthly basis (clothes, underwear, shoes, other items).

B – Assessment of the Committee

236. The Committee recalls that Article 13§1 of the Charter requires that States Parties must ensure to anyone without adequate resources the right to social and medical assistance. The obligation to provide assistance arises as soon as a person is in need, i.e. unable to obtain “adequate resources”. This means the resources needed to live a decent life and “meet basic needs in an adequate manner” (Conclusions XIV-1 (1998), Portugal). States Parties are under an obligation to provide migrants who are in an irregular situation in their territory with urgent medical assistance and such basic social assistance as is necessary to cope with an immediate state of need (accommodation, food, emergency care and clothing) (Conclusions 2013, Statement of Interpretation on Article 13§1 and 13§4; see also *Conference of European Churches (CEC) v. the Netherlands*, Complaint No. 90/2013, decision on the merits of 1 July 2014, §§105-126, and *FEANTSA v. the Netherlands*, Complaint No. 86/2012, op.cit., §§169-188).

237. The Committee notes that the complainant organisations’ complaint in relation to shelter, including access to sanitation facilities, guardianship and medical assistance have already been addressed under Articles 31§2 (shelter), 17§1 (shelter and guardianship) and 11 (health care). It does not consider it necessary to examine these issues separately from the standpoint of Article 13§1.

238. With regard to the alleged violation of Article 13 in relation to shortcomings in terms of state provision of other basic needs (food), the Committee notes that some sources have reported lack of appropriate food and lengthy queues to get food, particularly at the RICs on the islands (see UN Special Rapporteur on the human rights of migrants, 24 April 2017, §66; Council of Europe Commissioner for Human Rights, 31 October 2019). However, the Committee considers that the allegations and evidence provided by the complainant organisations do not sufficiently demonstrate that there are serious shortcomings in the provision of food to the children concerned by this complaint.

239. The Committee considers that it is not necessary to examine the allegations in relation to lack of shelter, guardianship and medical assistance under Article 13§1 of the Charter, given its existing findings in relation to Articles 31§2, 17 and 11. With regard to the allegations concerning the lack of provision of food, the Committee holds that it has not been demonstrated that there has been a violation of Article 13§1 of the Charter in this respect.

CONCLUSION

For these reasons, the Committee concludes:

- unanimously that there is a violation of Article 31§1 of the Charter due to:
 - the failure to provide adequate accommodation to refugee and asylum-seeking children on the islands;
 - the lack of sufficient long-term accommodation for unaccompanied refugee and asylum-seeking children on the mainland;

- unanimously that there is a violation of Article 31§2 of the Charter due to:
 - the inappropriate accommodation of accompanied and unaccompanied migrant children on the islands;
 - the lack of provision of a shelter to unaccompanied migrant children on the mainland;


- unanimously that there is a violation of Article 17§1 of the Charter due to:
 - the inadequate accommodation situation of accompanied and unaccompanied migrant children;
 - the lack of an effective guardianship system for unaccompanied and separated migrant children;
 - the detention of unaccompanied migrant children under the “protective custody” scheme;

- unanimously that there is a violation of Article 7§10 of the Charter due to the failure to take the necessary measures to guarantee accompanied and unaccompanied migrant children the special protection against physical and moral dangers;

- unanimously that there is a violation of Article 17§2 of the Charter due to the lack of access to education for accompanied and unaccompanied migrant children on the islands;

- unanimously that there is a violation of Article 11§§1 and 3 of the Charter due to:
 - the failure to provide appropriate accommodation and sufficient health care to accompanied and unaccompanied migrant children on the islands;
 - the failure to provide appropriate shelter to unaccompanied migrant children on the mainland;

- unanimously that there is no violation of Article 13§1 of the Charter with regard to the provision of food.



Aoife NOLAN
Rapporteur



Giuseppe PALMISANO
President



Henrik KRISTENSEN
Deputy Executive Secretary

APPENDIX

RELEVANT INTERNATIONAL MATERIALS

A – Council of Europe

1. European Court of Human Rights

1. In the Case of *Rahimi v Greece*, Application No. 8687/08, Judgment of 5 April 2011, the European Court of Human Rights found that the detention of an unaccompanied child seeking asylum had breached Article 3 (prohibition of inhuman or degrading treatment), 13 (right to an effective remedy) and 5§§ 1 and 4 (right to liberty and security) of the European Convention on Human Rights (“the Convention”). The case concerned the conditions in which the child was held in the Pagani detention centre on the island of Lesbos and subsequently released with a view to his expulsion.

2. In the case of *Popov v. France* (Applications Nos. 39472/07 and 39474/07), Judgment of 19 January 2012, the European Court of Human Rights found a violation of Articles 3 and 5§§ 1 and 4 of the Convention in respect of the administrative detention of two children detained with their migrant parents. The Court also found a violation of Article 8 (right to respect for private and family life) in respect of the administrative detention of the whole family. The applicants were detained for two weeks pending their removal to Kazakhstan. The relevant paragraphs of the judgment read as follows:

“91. The Court observes that in the present case, as in *Muskhadzhiyeva and Others [v. Belgium]*, no. 41442/07, 19 January 2010], the applicant children were accompanied by their parents throughout the period of detention. It finds, however, that this fact is not capable of exempting the authorities from their duty to protect children and take appropriate measures as part of their positive obligations under Article 3 of the Convention (*ibid.*, § 58) and that it is important to bear in mind that the child’s extreme vulnerability is the decisive factor and takes precedence over considerations relating to the status of illegal immigrant (see *Mubilanzila Mayeka and Kaniki Mitunga [v. Belgium]*, no. 13178/03, § 55, ECHR 2006-XI). The European Union directive concerning the reception of aliens thus treats minors, whether or not they are accompanied, as a category of vulnerable persons particularly requiring the authorities’ attention ... To be sure, children have specific needs that are related in particular to their age and lack of independence, but also to their asylum-seeker status. The Court would, moreover, observe that the Convention on the Rights of the Child encourages States to take the appropriate measures to ensure that a child who is seeking to obtain refugee status enjoys protection and humanitarian assistance, whether the child is alone or accompanied by his or her parents (see, *mutatis mutandis*, *Muskhadzhiyeva and Others*, § 62).

102. ...the conditions in which the children were held, for fifteen days, in an adult environment, faced with a strong police presence, without any activities to keep them occupied, added to the parents’ distress, were manifestly ill-adapted to their age. The two children, a small girl of three and a baby, found themselves in a situation of particular vulnerability, accentuated by the confinement. Those living conditions created for them a situation of stress and anxiety, with particularly traumatic consequences.

103. Accordingly, in view of the children's young age, the length of their detention and the conditions of their confinement in a detention centre, the Court is of the view that the authorities failed to take into account the inevitably harmful consequences for the children. ... There has been therefore violation [of Article 3 of the Convention] in respect of the children.

119. In the present case, the members of the family were held in administrative detention on account of the illegality of their presence in France, on premises that were not adapted to the children's extreme vulnerability ... The Court finds, as in the above-cited case of *Muskhadzhivyyeva and Others*, that, in spite of the fact that they were accompanied by their parents, and even though the detention centre had a special wing for the accommodation of families, the children's particular situation was not examined and the authorities did not verify that the placement in administrative detention was a measure of last resort for which no alternative was available. The Court thus finds that the French system did not sufficiently protect their right to liberty.

147. ... The Court is of the view that the child's best interests cannot be confined to keeping the family together and that the authorities have to take all the necessary steps to limit, as far as possible, the detention of families accompanied by children and effectively preserve the right to family life. In the absence of any indication to suggest that the family was going to abscond, the measure of detention for fifteen days in a secure centre appears disproportionate to the aim pursued.

148. Accordingly, the Court finds that the applicants sustained a disproportionate interference with their right to respect for their family life and that there has been a violation of Article 8 of the Convention. »

3. In the case of *Tarakhel v. Switzerland* (Application No. 29217/12), Judgment of 4 November 2014, the Court found a violation of Article 3 of the Convention in respect of the proposed removal of an Afghan asylum-seeker family to Italy under EU Dublin II Regulation. The Court stated as follows:

« 118. The Court reiterates that to fall within the scope of Article 3 the ill-treatment must attain a minimum level of severity. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment and its physical or mental effects and, in some instances, the sex, age and state of health of the victim (see paragraph 94 above). It further reiterates that, as a "particularly underprivileged and vulnerable" population group, asylum seekers require "special protection" under that provision (see *M.S.S. [v. Belgium and Greece]* [GC], no. 30696/09, § 251, ECHR 2011).

119. This requirement of "special protection" of asylum seekers is particularly important when the persons concerned are children, in view of their specific needs and their extreme vulnerability. This applies even when, as in the present case, the children seeking asylum are accompanied by their parents (see *Popov [v. France]*, nos. 39472/07 and 39474/07, § 91, 19 January 2012). Accordingly, the reception conditions for children seeking asylum must be adapted to their age, to ensure that those conditions do not "create ... for them a situation of stress and anxiety, with particularly traumatic consequences" (see, *mutatis mutandis*, *Popov*, cited above, § 102). Otherwise, the conditions in question would attain the threshold of severity required to come within the scope of the prohibition under Article 3 of the Convention. »

4. The case of *H.A. v. Greece*, Application No. 19951/16, Judgment of 28 February 2019, concerned the placement of nine unaccompanied children in different border posts and police stations in Greece, for periods ranging between 21 and 33 days. The children were subsequently transferred to the Diavata reception centre (an open centre with a safe zone in mainland Greece) and then to special facilities for children. The Court found a violation of Article 3 of the Convention on account of the conditions of the applicants' detention in the police stations. The Court did not make a finding of

violation of Article 3 as regards the living conditions in the Diavata centre. In addition, the Court found a violation of Article 5§§ 1 and 4 in respect of the applicants' placement in border posts and police stations under « protective custody » (Article 118 of PD 141/1991). With regard to this legislation, the Court noted that it had not been intended for unaccompanied migrant children and did not provide for any time-limit, thus potentially leading to situations where the deprivation of liberty of such children could be prolonged for lengthy periods. This was all the more problematic as they were detained in police stations, where the conditions were incompatible with lengthy periods of imprisonment (see paragraph 202 of the Judgment). Moreover, the public prosecutor at the relevant criminal court, who was the applicants' statutory guardian, had not lodged an appeal on their behalf for the purpose of discontinuing their detention in the police stations in order to speed up their transfer to appropriate facilities (see paragraph 211 of the Judgment).

5. The case of *Sh.D. and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia*, Application No. 14165/16, Judgment of 13 June 2019, concerned the living conditions of five unaccompanied children in Greece. The Court found a violation of Article 3 of the Convention on account of the conditions of detention in the police stations in which three of the applicants were held. It also held that the authorities had breached Article 3 for not fulfilling the obligation to provide for and protect four of the applicants, who had lived for a month in the Idomeni camp (on the border between Greece and North Macedonia) in an environment unsuitable for adolescents. The Court observed that Article 19 of Decree no. 220/2007 required the competent authorities to inform the prosecutor with responsibility for children or the prosecutor at the first-instance court with territorial jurisdiction, who acted as a temporary guardian and took the necessary steps to appoint a guardian. However, there was nothing in the case file to indicate that a prosecutor had been informed of their presence in the country (see paragraph 59 of the Judgment). The Court further found a violation of Article 5§1 on account of the placement of three applicants in police stations under "protective custody".

2. The Committee of Ministers

6. The Committee of Ministers of the Council of Europe, in its Recommendation CM/Rec(2019)11 to member States on effective guardianship for unaccompanied and separated children in the context of migration, adopted the following guiding principles for an effective guardianship system:

“III. Guiding principles for an effective guardianship system

Principle 1 – Protection of the rights of unaccompanied and separated children in migration through guardianship

States should have in place an effective system of guardianship which takes into account the specific needs and circumstances of unaccompanied and separated children in migration in order to protect and promote their rights and secure their best interests.

Principle 2 – Guardianship frameworks and measures

States should adopt and implement adequate legal, policy, regulatory and/or administrative frameworks to ensure the provision of guardianship for unaccompanied and separated children in migration.

Principle 3 – Appointment or designation of guardians without undue delay

States should ensure that an unaccompanied or separated child in migration has a guardian appointed or designated without undue delay, taking into account individual characteristics, to provide support to the child until the age of majority, and that care and support are available through guardianship or other means for a transitional period after reaching 18 years of age, as may be deemed appropriate in specific situations.

Principle 4 – Legal responsibilities and tasks of guardians

States should take measures to empower guardians to inform, assist, support and, where provided by law, represent unaccompanied and separated children in migration in processes affecting them, to safeguard their rights and best interests and to act as a link between the child and the authorities, agencies and individuals with responsibilities for them. States should ensure that guardians enjoy the independence and impartiality appropriate to their role.

(...)

Principle 7 – Resources, recruitment, qualifications and training

States should allocate adequate resources to ensure effective guardianship for unaccompanied and separated children in migration, including ensuring that guardians are adequately screened, reliable, qualified and supported throughout their mandate.”

3. The Parliamentary Assembly of the Council of Europe (PACE)

7. The Parliamentary Assembly of the Council of Europe, in its Recommendation 1985 (2011) on the situation of undocumented migrant children in an irregular situation, stated that:

“9. Bearing in mind the need for a firm legislative basis and implementation of the laws in practice, the Assembly recommends that member states:

9.1. guarantee the right to education by:

9.1.1. ensuring that this right is enshrined in clear and unequivocal legislation and is being implemented with the assistance of policy documents and education circulars; (...)

9.2. guarantee the right to health care by:

9.2.1. clarifying, through legislation, the entitlement, without discrimination, of undocumented migrant children to health care that goes beyond emergency care and which includes primary and secondary health care, as well as appropriate psychological assistance; (...)

9.3. guarantee access to housing by:

9.3.1. ensuring a legislative basis for dealing with the accommodation needs of undocumented migrant children that does not simply provide for placing them in care institutions; (...)

9.4. refrain from detaining undocumented migrant children, and protect their liberty by abiding by the following principles:

9.4.1. a child should, in principle, never be detained. Where there is any consideration to detain a child, the best interest of the child should always come first;

9.4.2. in exceptional cases where detention is necessary, it should be provided for by law, with all relevant legal protection and effective judicial review remedies, and only after alternatives to detention have been considered;

9.4.3. if detained, the period must be for the shortest possible period of time and the facilities must be suited to the age of the child; relevant activities and educational support must also be available;

9.4.4. if detention does take place, it must be in separate facilities from those for adults, or in facilities meant to accommodate children with their parents or other family members, and the child should not be separated from a parent, except in exceptional circumstances;

9.4.5. unaccompanied children should, however, never be detained;

9.4.6. no child should be deprived of his or her liberty solely because of his or her migration status, and never as a punitive measure;

9.4.7. where a doubt exists as to the age of the child, the benefit of the doubt should be given to that child; (...)"

8. In its Resolution 2118 (2016), "Refugees in Greece: challenges and risks – A European responsibility", the Parliamentary Assembly was particularly concerned by the following aspects:

« 5.1. on the Aegean islands, asylum seekers – who have been convicted of no crime – are detained in the reception centres known as "hotspots" on dubious legal grounds, in conditions that fall below the standards expected of prisons, in an administrative limbo with little information on their situation and complete uncertainty as to their future;

5.2. vulnerable persons, including women and children, are held in the hotspots alongside angry, frustrated young adults, and are thus exposed to risks of violence, exploitation and abuse;
(...)

5.4. conditions in most of the reception facilities on the mainland, many of which are entirely unsuited to such use, fall far below acceptable standards in such basic areas as capacity, shelter, food, sanitation and medical care. Again, many children are forced to endure these conditions;

5.5. thousands of others, again including children, live in informal camps in conditions even more squalid and hazardous than those in the reception centres;
(...)

5.7. the rights and interests of unaccompanied and separated children are not effectively protected due to problems with the age-assessment system, the guardianship system, appropriate accommodation capacity and provision of information. Many unaccompanied and separated children are detained, purportedly for their own protection, in degrading conditions in police stations clearly unsuited to the purpose; »

9. Resolution 2174 (2017) on the human rights implications of the European response to transit migration across the Mediterranean:

« 2. Since the Assembly last examined the issue one year ago, the situation in Greece has seen some improvements despite the fact that Greece has become a destination country where almost 100% of newly arriving refugees and migrants request asylum. At present, there are 63 000 asylum seekers waiting in Greece for the outcome of their status determination procedure – 14 000 of them are confined to the islands. Thanks to the creation of hotspots, reception, registration and asylum processing have become much more efficient and, given the continuous efforts of the Greek authorities and other stakeholders to improve these processes, they raise

less concern than before. However, overall, reception conditions are still poor, and the situation of unaccompanied minors is of utmost concern. Of the 2 000 minors registered in Greece, only 1 352 live in shelters adapted to their specific needs.

(...)

5. Serious concerns remain in many important areas, including delays in the registration and processing of asylum claims, despite the significant efforts made by the Greek Asylum Service; “protective detention” of unaccompanied children in police stations, even for short periods; inappropriate age-assessment procedures; the absence of an effective guardianship system for unaccompanied minors; sexual and gender-based violence in reception facilities; insufficient access to education and health care; and inadequate integration measures, despite the Greek authorities’ implementation of an integration action plan. The Assembly also notes the continuing deficiencies in the Greek legislative and administrative framework and lack of co-ordination for responding to the basic needs of refugees and migrants, including an inability to absorb and make effective use of the available international funding. »

10. Resolution 2280 (2019), “The situation of migrants and refugees on the Greek islands: more needs to be done”:

« 1. The Parliamentary Assembly notes that the formerly tense situation in the reception and identification centres on the Greek islands of Leros and Kos improved in 2017. However, it expresses great concern that the humanitarian situation of asylum seekers in the centres on the Greek islands of Lesbos, Samos and Chios has remained very difficult for many years. Originally foreseen to house approximately 7 500 people, the capacity of these five centres was reduced to approximately 5 000 places by the end of 2017, when in fact they were occupied by 10 907 people. This number even increased, with the centre at Moria on Lesbos alone housing more than 8 000 people in autumn 2018 due to an increase in arrivals from the nearby Turkish coast.

2. The Assembly notes that, since the EU–Turkey Statement of 18 March 2016, the humanitarian and human rights situations in the “hotspots” on the islands of Lesbos, Samos and Chios have not improved. It furthermore notes that the implementation of the “hotspot” concept of the European Union does not meet the requirements for improvement of the situation on the islands because it is not in line with the provisions of international law on refugees, such as the Geneva Refugee Convention and the European Convention on Human Rights (ETS No. 5).

4. The Assembly is particularly alarmed by reports about sexual violence, exploitation and human trafficking by camp gangs, smugglers and other members of organised crime, which cause psychological distress beyond the traumatic situations many experienced on route while fleeing to Turkey and continuing to Greece, and invites the Greek authorities to increase their efforts towards combating the aforementioned crimes;

10. Finally, the Assembly recommends the following action to improve the situation of asylum seekers, refugees, rejected asylum applicants and irregular migrants:

10.1 the Greek authorities should:

10.1.1 rapidly improve the housing, sanitary and security situation inside the overcrowded reception and identification centres of Lesbos, Samos and Chios, and/or transfer registered and identified asylum applicants to open accommodation centres operated by the IOM, alternative camps operated by humanitarian non-governmental organisations (NGOs) and apartments

rented by the UNHCR on Greek islands and mainland Greece; uncontrolled transfers to the streets of Greek cities or to third countries must be stopped;

10.1.2 revise the practice under which transfers to mainland Greece require vulnerability or a serious medical condition of the asylum applicant, in order to avoid cases of self-harm; medical services should be improved rapidly inside all camps on islands and the mainland alike; (...)

10.1.5 ensure that unaccompanied minors and women are particularly protected against violence, sexual exploitation and human trafficking, as required by the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201) and the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197); (...)

10.1.6 ensure effective guardianship for unaccompanied minors, which implies due responsibility of guardians and respect for the right of parents to maintain parental authority over unaccompanied minors; provide more housing facilities for unaccompanied minors both in mainland Greece and on the islands; unaccompanied minors should be allowed to reunite or maintain contact with family members, (...);»

4. The Council of Europe Commissioner for Human Rights

11. The Council of Europe Commissioner for Human Rights' Report following her visit to Greece from 25 to 29 June 2018, ComDH(2018)24, published on 6 November 2018, focused on the issue of reception and integration of migrants, including asylum seekers, as well as on the impact of austerity on the rights to health and education. On the Eastern Aegean island of Lesbos, she visited the Reception and Identification Centre of Moria.

12. The Commissioner noted that migrant reception conditions were below international standards, especially on the Aegean islands. As the Commissioner could see while visiting the Moria hotspot, serious overcrowding, combined with poor hygiene conditions, insecurity and despair put the human rights of the camp's residents at high risk. The Commissioner observed with great concern that living conditions in reception camps presented significant risks to people's health, which were exacerbated by difficult access to primary healthcare services. She was also particularly alarmed at the serious and widespread allegations of sexual and gender-based violence perpetrated in reception facilities, including against underage residents.

13. In her report, the Commissioner was deeply concerned at the situation of most unaccompanied migrant children, who were not adequately sheltered and faced serious difficulties in obtaining social support. The situation was even worse for those detained under the regime of "protective custody", which is a far-reaching interference with migrants' right to liberty and which the Commissioner called on Greece to stop. She was worried about low school attendance rates of migrant children on the mainland and the lack of access to education available to them on the Aegean islands. Against this background, the Commissioner urged the authorities to reconsider the geographical restriction which prevented migrants arriving in the islands from leaving, and to accelerate migrant transfers to the mainland, where reception capacities should be significantly and rapidly increased.

14. Following her visit to Greece (31 October 2019), during which she visited reception facilities in Lesbos, Samos, and Corinth, the Commissioner for Human Rights stated that:

“The situation of migrants, including asylum seekers, in the Greek Aegean islands has dramatically worsened over the past 12 months. Urgent measures are needed to address the desperate conditions in which thousands of human beings are living. »

15. On the unhygienic conditions in which migrants are kept in the islands she said : “It is an explosive situation. There is a desperate lack of medical care and sanitation in the vastly overcrowded camps I have visited. People queue for hours to get food and to go to bathrooms, when these are available. On Samos, families are chipping away at rocks to make some space on steep hillsides to set up their makeshift shelters, often made from trees they cut themselves. This no longer has anything to do with the reception of asylum seekers. This has become a struggle for survival.”

16. She recommended strengthening the humanitarian assistance to those that remain or will arrive on the islands. “The authorities must boost the capacities of local hospitals, set up ad hoc medical facilities in the reception camps and increase the number of health care professionals in the islands in order to provide migrants and local residents with the medical care they are entitled to”.

17. Recommendation of the Commissioner for Human Rights of the Council of Europe on the implementation of the right to housing, 30 June 2009, document CommDH(2009)5:

“3.3.2 Reduction of homelessness

Above all, the reduction of homelessness implies the introduction of emergency and long-term measures, such as provision of immediate shelter and care of the homeless, as well as measures to help them overcome their difficulties and to prevent them from becoming homeless again. Although setting waiting periods for adequate housing is permissible, the starting point should be, besides meeting the requirements of Articles 2 and 3 of the ECHR, to guarantee that all people, regardless of circumstance, are able to benefit from housing that corresponds with human dignity, the minimum being temporary shelter. Consequently, the state should have at its disposal a sufficient quantity of temporary shelters that can provide for all in need without delay.

The requirement of dignity in housing means that even temporary shelters must fulfil the demands for safety, health and hygiene, including basic amenities, i.e. clean water, sufficient lighting and heating. The basic requirements of temporary housing include also security of the immediate surroundings. Nevertheless, temporary housing need not be subject to the same requirements of privacy, family life and suitability as are required from more permanent forms of standard housing, once the minimum requirements are met.

The housing of people in reception camps and temporary shelters which do not satisfy the standards of human dignity is in violation of the aforementioned requirements.”

5. The Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

18. The CPT has repeatedly recommended the Greek authorities to review their policy regarding the detention of unaccompanied children both for reception and identification purposes and under “protective custody” in places of deprivation of liberty, particularly in police and border guard stations, and put an end to their detention (CPT/Inf(2019) 4, 19 February 2019, par. 128; CPT/Inf (2020) 15, 9 April 2020, par. 114; CPT/Inf (2020) 35, 19 November 2020, par. 46). The CPT has stated that, as a matter of principle, unaccompanied children should not be held in a closed immigration detention facility, but they should always be provided with special care and accommodated in an open (or semi-open) establishment specialised for juveniles (e.g. a social welfare/educational institution for juveniles). During its visit to Greece from 28 March to 9 April 2019, the CPT delegation met with three unaccompanied children held under “protective custody” at Omonia Police Station. The minors had been placed in the cell together with unrelated adult men for periods between one and five days. The CPT considered that placing unaccompanied children for several days or longer in police custody for “protection” purposes without assistance or psycho-social support instead of providing them with accommodation in an appropriate shelter was, in itself, unacceptable (CPT/Inf (2020) 15, 9 April 2020, par. 114).

6. The Special Representative of the Secretary General of the Council of Europe on migration and refugees

19. Report of the fact-finding mission by Ambassador Tomáš Boček, Special Representative of the Secretary General of the Council of Europe on migration and refugees to Greece and “the former Yugoslav Republic of Macedonia”, 7-11 March 2016, SG/Inf(2016)18, 26 April 2016 (footnotes omitted):

“4. The treatment of refugee and migrant children

a) Numbers

An issue that I raised at several meetings I had in Greece was the treatment of refugee and migrant children in general, and more specifically the treatment of unaccompanied ones (UAMs).

Confusion seems to reign concerning the number of UAMs having transited through Greece during the recent migration crisis. As it transpired from an IOM and UNICEF data brief published on 30 November 2015, entitled Migration of Children to Europe, the numbers given by Greece, “the former Yugoslav Republic of Macedonia” and some destination countries do not tally. It is clear that a significant number of UAMS have tried to pass for adults while transiting from Greece, one of the possible reasons for this being apprehension concerning the length of the international procedure for family reunification.

(...)

c) Who is unaccompanied?

Several interlocutors also raised doubts about the current understanding in the relevant Greek administrative/judicial practice of who should be considered an UAM. It would appear that those travelling with members of the extended family are considered unaccompanied. Cases were also reported of spouses being separated. Of course, as already seen, there are also several allegations of “non-identified” cases of UAMs and one should not underestimate the risks that these could involve for some of the children concerned.

d) "Shelters"

According to Greek law, it is the local prosecutor who decides on the follow-up to be given once a case of an unaccompanied child is identified. Usually, the prosecutor will place the child in a centre, like the "shelter" run by Arsis that I visited in Petralona, Athens. The conditions in the Arsis "shelter" appeared to be very good. The problem seems to be that this and, according to reports I have received, all such "shelters" are close to full capacity. The resources of EKKA (the National Centre for Social Solidarity, which is ultimately responsible for providing accommodation for UAMs) also appear to be overstretched. This is, therefore, a question that should be addressed.

e) Deprivation of liberty

(...)

A separate problem is the deprivation of liberty of UAMs on their way to "shelters". As already seen, once a child is identified as an UAM, s/he will be placed in a "shelter". However, there seems to be a period of time until s/he arrives safely in his/her "shelter" when the authorities consider that they have no other option but to place him/her in protective custody, given the lack of appropriate transit facilities. This practice has been criticised by many. Again, it would appear that some NGOs, including METAaction, try to fill the gap by offering open transit accommodation.

f) Guardianship

Many of my interlocutors agreed on the need to overhaul radically the current system of guardianship, which also applies to unaccompanied minors. Greek law provides that the competent authorities must ensure that a child is legally represented, independently of whether s/he applies for international protection. The public prosecutor for children or the public prosecutor of the local first-instance court acts as a provisional guardian. S/he should appoint a permanent one. In practice, the prosecutors lack the capacity to handle the large number of UAMs who are referred to them. Nor can they rely on another state institution for help.

It was encouraging to learn during the mission that METAaction has launched a project aiming at creating a guardianship network for UAMs. The staff of the NGO in question provide services in UAMs' "shelters" and can exercise powers delegated to them by the competent public prosecutor.

It was also encouraging to learn that the authorities want to introduce legislation that would provide a long-term response to the problem.

g) Education

Children of asylum seekers and children seeking international protection have access to the Greek education system under the same conditions as Greek children. However, some schools create practical problems, asking for documents that are not required by law. This is an issue to be clarified by the Ministry of Education.

I have already discussed the question of the lack of educational activities in some camps/on some sites.

h) Access to information

Refugee and migrant children in general, and especially UAMs, need information on their legal situation and future prospects. In the hotspots, camps or "shelters" that I visited, I did not see any child-friendly information material available in foreign languages. It seems that in 2015 the Greek Asylum Service issued a leaflet in English, French, Arabic and Farsi, providing information in simple language on the rights under the Dublin Regulation of asylum seeking UAMs. The lack of information is a concern. The representatives of the European Asylum Support Office (EASO) have, for example, explained to me that, although UAMs are concerned by the relocation scheme, it is difficult to explain it to them. In my view, up-to-date child-friendly material should be produced in different languages explaining to each age group their rights and applicable procedures.

j) Criminal activities

There have been several reports of refugee and migrant children engaging in criminal activities, such as drug-trafficking and prostitution, in order to earn money. Reference was also made during my mission to Greece to cases of sexual exploitation of refugee and migrant children. However, it is difficult to assess whether these were isolated instances or whether they were part of a pattern. There is also a danger that the tightening up of entry procedures and the closing down of borders will result in families and UAMs leaving the camps and “shelters” to seek the help of smugglers. This exposes them to a risk of violence and exploitation by traffickers. These issues are of direct relevance to the work of the Group of Experts on Action against Trafficking in Human Beings (GRETA), which is responsible for monitoring implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, and the Committee of the parties to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. These bodies to pay, each within its terms of reference, specific attention to the issues identified above and consider making urgent requests for information to the States Parties concerned. The objective would be to prevent or redress serious human-rights violations in connection with the recent migratory flows.”

B – United Nations

1. United Nations Convention on the Rights of the Child

“Article 3

1. In all actions concerning children, ... the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 20

1. A child temporarily or permanently deprived of his or her family environment ... shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programs, particularly with regard to nutrition, clothing and housing.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
(a) Make primary education compulsory and available free to all;
(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
...
(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

Article 37

States Parties shall ensure that:

...
(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances."

2. The United Nations Committee on the Rights of the Child (CRC)

20. General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside Their Country of Origin:

“7. “Unaccompanied children” (also called unaccompanied minors) are children, as defined in Article 1 of the Convention, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.

8. “Separated children” are children, as defined in Article 1 of the Convention, who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.

9. A “child as defined in Article 1 of the Convention”, means “every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier”. This means that any instruments governing children in the territory of the State cannot define a child in any way that deviates from the norms determining the age of majority in that State.

21. Subsequent steps, such as the appointment of a competent guardian as expeditiously as possible, serves as a key procedural safeguard to ensure respect for the best interests of an unaccompanied or separated child. Therefore, such a child should only be referred to asylum or other procedures after the appointment of a guardian. In cases where separated or unaccompanied children are referred to asylum procedures or other administrative or judicial proceedings, they should also be provided with a legal representative in addition to a guardian.

...

33. States are required to create the underlying legal framework and to take necessary measures to secure proper representation of an unaccompanied or separated child’s best interests. Therefore, States should appoint a guardian or adviser as soon as the unaccompanied or separated child is identified and maintain such guardianship arrangements until the child has either reached the age of majority or has permanently left the territory and/or jurisdiction of the State, in compliance with the Convention and other international obligations. The guardian should be consulted and informed regarding all actions taken in relation to the child. The guardian should have the authority to be present in all planning and decision-making processes, including immigration and appeal hearings, care arrangements and all efforts to search for a durable solution. The guardian or adviser should have the necessary expertise in the field of childcare, so as to ensure that the interests of the child are safeguarded and that the child’s legal, social, health, psychological, material and educational needs are appropriately covered by, inter alia, the guardian acting as a link between the child and existing specialist agencies/individuals who provide the continuum of care required by the child. Agencies or individuals whose interests could potentially be in conflict with those of the child’s should not be eligible for guardianship....

34. In the case of a separated child, guardianship should regularly be assigned to the accompanying adult family member or non-primary family caretaker unless there is an indication that it would not be in the best interests of the child to do so, for example, where the accompanying adult has abused the child. In cases where a child is accompanied by a non-family adult or caretaker, suitability for guardianship must be scrutinized more closely. If such a guardian is able and willing to provide day-to-day care, but unable to adequately represent the

child's best interests in all spheres and at all levels of the child's life, supplementary measures (such as the appointment of an adviser or legal representative) must be secured.

35. Review mechanisms shall be introduced and implemented to monitor the quality of the exercise of guardianship in order to ensure the best interests of the child are being represented throughout the decision-making process and, in particular, to prevent abuse.

36. In cases where children are involved in asylum procedures or administrative or judicial proceedings, they should, in addition to the appointment of a guardian, be provided with legal representation.

37. At all times children should be informed of arrangements with respect to guardianship and legal representation and their opinions should be taken into consideration.

38. In large-scale emergencies, where it will be difficult to establish guardianship arrangements on an individual basis, the rights and best interests of separated children should be safeguarded and promoted by States and organizations working on behalf of these children.

41. States should ensure that access to education is maintained during all phases of the displacement cycle. Every unaccompanied and separated child, irrespective of status, shall have full access to education in the country that they have entered in line with Articles 28, 29 (1) (c), 30 and 32 of the Convention and the general principles developed by the Committee. Such access should be granted without discrimination and in particular, separated and unaccompanied girls shall have equal access to formal and informal education, including vocational training at all levels. Access to quality education should also be ensured for children with special needs, in particular children with disabilities.

44. States should ensure that separated and unaccompanied children have a standard of living adequate for their physical, mental, spiritual and moral development. As provided in article 27 (2) of the Convention, States shall provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing."

21. 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 (footnotes omitted).

"10. Article 37 (b) of the Convention of the Rights of the Child establishes the general principle that a child may be deprived of liberty only as a last resort and for the shortest appropriate period of time. However, offences concerning irregular entry or stay cannot under any circumstances have consequences similar to those derived from the commission of a crime. Therefore, the possibility of detaining children as a measure of last resort, which may apply in other contexts such as juvenile criminal justice, is not applicable in immigration proceedings as it would conflict with the principle of the best interests of the child and the right to development.

11. Instead, States should adopt solutions that fulfil the best interests of the child, along with their rights to liberty and family life, through legislation, policy and practices that allow children to remain with their family members and/or guardians in non-custodial, community-based contexts while their immigration status is being resolved and the children's best interests are assessed, as well as before return. When children are unaccompanied, they are entitled to special protection and assistance by the State in the form of alternative care and accommodation in accordance with the Guidelines for the Alternative Care of Children. When children are accompanied, the need to keep the family together is not a valid reason to justify

the deprivation of liberty of a child. When the child's best interests require keeping the family together, the imperative requirement not to deprive the child of liberty extends to the child's parents and requires the authorities to choose non-custodial solutions for the entire family.

12. Consequently, child and family immigration detention should be prohibited by law and its abolishment ensured in policy and practice. Resources dedicated to detention should be diverted to non-custodial solutions carried out by competent child protection actors engaging with the child and, where applicable, his or her family. The measures offered to the child and the family should not imply any kind of child or family deprivation of liberty and should be based on an ethic of care and protection, not enforcement. They should focus on case resolution in the best interests of the child and provide all the material, social and emotional conditions necessary to ensure the comprehensive protection of the rights of the child, allowing for children's holistic development. Independent public bodies, as well as civil society organizations, should be able to regularly monitor these facilities or measures. Children and families should have access to effective remedies in case any kind of immigration detention is enforced.

13. In the view of the Committees, child protection and welfare actors should take primary responsibility for children in the context of international migration. When a migrant child is first detected by immigration authorities, child protection or welfare officials should immediately be informed and be in charge of screening the child for protection, shelter and other needs. Unaccompanied and separated children should be placed in the national/local alternative care system, preferably in family-type care with their own family when available, or otherwise in community care when family is not available. These decisions have to be taken within a child-sensitive due process framework, including the child's rights to be heard, to have access to justice and to challenge before a judge any decision that could deprive him or her of liberty, and should take into account the vulnerabilities and needs of the child, including those based on their gender, disability, age, mental health, pregnancy or other conditions.

17. More specifically, and in particular in the context of best interest assessments and within best interest determination procedures, children should be guaranteed the right to:

...

(i) For unaccompanied and separated children, have appointed a competent guardian, as expeditiously as possible, who serves as a key procedural safeguard to ensure respect for their best interests; ...

49. 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. As provided in article 27 (3) of the Convention on the Rights of the Child. States, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

50. States parties should develop detailed guidelines on standards of reception facilities, assuring adequate space and privacy for children and their families. States should take measures to ensure an adequate standard of living in temporary locations, such as reception facilities and formal and informal camps, ensuring that these are accessible to children and their parents, including persons with disabilities, pregnant women and breastfeeding mothers. States

should ensure that residential facilities do not restrict children's day-to-day movements unnecessarily, including de facto restriction of movement. ...

54. The Committees acknowledge that a child's physical and mental health can be affected by a variety of factors, including structural determinants such as poverty, unemployment, migration and population displacements, violence, discrimination and marginalization. The Committees are aware that migrant and refugee children may experience severe emotional distress and may have particular and often urgent mental health needs. Children should therefore have access to specific care and psychological support, recognizing that children experience stress differently from adults. ...

59. All children in the context of international migration, irrespective of status, shall have full access to all levels and all aspects of education, including early childhood education and vocational training, on the basis of equality with nationals of the country where those children are living. This obligation implies that States should ensure equal access to quality and inclusive education for all migrant children, irrespective of their migration status. Migrant children should have access to alternative learning programmes where necessary and participate fully in examinations and receive certification of their studies.

60. The Committees strongly urge States to expeditiously reform regulations and practices that prevent migrant children, in particular undocumented children, from registering at schools and educational institutions (...) To respect children's right to education, States are also encouraged to avoid disruption during migration-related procedures, avoiding children having to move during the school year if possible, as well as supporting them to complete any compulsory and ongoing education courses when they reach the age of majority. ..."

3. The United Nations Human Rights Committee

22. In its Concluding observations on the second periodic report of Greece (CCPR/C/GRC/CO/2, 3 December 2015, para. 31-32), the Human Rights Committee expressed concern about the difficulties faced by Greece in assigning guardianship of unaccompanied children seeking asylum or residing illegally and the inadequate conditions of detention facilities in which these children were held, including their placement with adults.

4. The United Nations Committee against Torture

23. Concluding observations on the seventh periodic report of Greece (CAT/C/GRC/CO/7), 3 September 2019:

"Unaccompanied migrant and asylum-seeking children

22. The Committee notes with concern that, while the existing regulations provide that minors are not to be detained except in exceptional circumstances, unaccompanied migrant and asylum-seeking children continue to be placed in immigration detention ("protective custody") until a shelter placement becomes available. This lack of shelter space leads, in many cases, to the prolonged detention of unaccompanied children in police holding cells, pre-removal centres and reception and identification centres at the above-mentioned "hotspots", where living conditions are substandard and basic services are often not available (arts. 11 and 16)."

5. The United Nations Committee on the Elimination of Racial Discrimination

24. Concluding observations on the twentieth to twenty-second periodic reports of Greece (CERD/C/GRC/CO/20-22), 3 October 2016:

“ 22.The Committee is aware that the recent migrant crisis has put a heavy burden on the State party. The Committee welcomes the many steps taken in that regard, including the reforms undertaken in the asylum system and the opening of several new regional asylum offices and extending the coverage of basic health care to vulnerable undocumented migrants. The Committee however remains concerned about:

(a) The detention of undocumented migrants entering the State party, including families and children, for periods exceeding the maximum legal period of administrative detention combined with lack of due process guarantees while in detention;

(b) Substandard conditions at the reception and identification centres on the islands and the chaotic situation in those centres, which have a disproportionate impact on women and children, who face higher risks of sexual violence, with inadequate response from the authorities;

(c) Inadequate access to immigration and asylum procedures, a lack of appropriate information among new arrivals about the asylum procedures and time line, and lengthy procedures to register migrants and asylum seekers, a state of affairs that has been further exacerbated since the conclusion of the statement by the European Union and Turkey on migration;

(d) The ineffectiveness of the guardianship system for unaccompanied children, the lack of sufficient appropriate accommodation for such children and the de facto practice of detaining them, including in substandard conditions and with unrelated adults.“

6. International Covenant on Economic, Social and Cultural Rights of 16 December 1966

“Article 10

The States Parties to the present Covenant recognize that:

...

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. ...

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

...

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. ..."

7. The 1951 Convention Relating to the Status of Refugees

"Article 21

Housing

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

Article 22

Public education

1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.

2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships."

Article 31

Refugees unlawfully in the country of refugee

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence."

8. The Office of the United Nations High Commissioner for Refugees (UNHCR)

25. The UNHCR's Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum of 1997 :

" 7.1 Children seeking asylum, particularly if they are unaccompanied, are entitled to special care and protection.

...

7.6 Children seeking asylum should not be kept in detention. This is particularly important in the case of unaccompanied children.

7.9 The Convention on the Rights of the Child declares that the child has the right to enjoy the highest attainable standard of health and facilities for the treatment of illness and rehabilitation of health. Children seeking asylum should have the same access to health care as national children.

...

7.12 Every child, regardless of status, should have full access to education in the asylum country as soon as possible. The child should be registered with appropriate school authorities.

...

10.1 In recognition of the particular vulnerability of unaccompanied children, every effort should be made to ensure that decisions relating to them are taken and implemented without any undue delays.”

26. The UNCHR’s Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012 (footnotes omitted):

“53. All appropriate alternative care arrangements should be considered in the case of children accompanying their parents, not least because of the well-documented deleterious effects of detention on children’s well-being, including on their physical and mental development. The detention of children with their parents or primary caregivers needs to balance, *inter alia*, the right to family and private life of the family as a whole, the appropriateness of the detention facilities for children, and the best interests of the child.

54. As a general rule, unaccompanied or separated children should not be detained. Detention cannot be justified based solely on the fact that the child is unaccompanied or separated, or on the basis of his or her migration or residence status. Where possible they should be released into the care of family members who already have residency within the asylum country. Where this is not possible, alternative care arrangements, such as foster placement or residential homes, should be made by the competent child care authorities, ensuring that the child receives appropriate supervision. Residential homes or foster care placements need to cater for the child’s proper development (both physical and mental) while longer term solutions are being considered. A primary objective must be the best interests of the child.

56. Children who are detained benefit from the same minimum procedural guarantees as adults, but these should be tailored to their particular needs (see Guideline 9). An independent and qualified guardian as well as a legal adviser should be appointed for unaccompanied or separated children. During detention, children have a right to education which should optimally take place outside the detention premises in order to facilitate the continuation of their education upon release. Provision should be made for their recreation and play, including with other children, which is essential to a child’s mental development and will alleviate stress and trauma (see also Guideline 8).”

9. The United Nations Special Rapporteur on the human rights of migrants

27. In his Report on his mission to Greece (A/HRC/35/25/Add.2, 24 April 2017, para. 90-104, visit from 12 to 16 May 2016), the UN Special Rapporteur on the human rights of migrants stated that open reception facilities in Greece were ill equipped to adequately host large number of refugee children for a prolonged period. At the time of his visit, migrant and refugee children did not have access to schools, resulting in

long-term gaps in their education. The Special Rapporteur expressed concern about the situation of unaccompanied children with regard to the functioning of the guardianship system and their detention under “protective custody” while awaiting referral to an adequate shelter facility.

10. The United Nations Working Group on Arbitrary Detention

28. In its Report on its visit to Greece (A/HRC/45/16/Add.1, 29 July 2020, para. 65-72 and 110, visit from 2 to 13 December 2019), the UN Working Group on Arbitrary Detention examined the regime of “protective custody” of unaccompanied children. It noted that the children held in such regime remained high: according to data from EKKA, at 30 April 2020, there were 276 children in protective custody. The Working Group was also informed that the Public Prosecutor, as the authority responsible for the care and security of the children under protective custody, did not visit the children in the detention facilities. Referring to a recent judgment of the European Court of Human Rights (*H.A. v. Greece*, see above), it urged the Greek Government to uphold its obligations under the Convention on the Rights of the Child and the European Convention on Human Rights by putting an end to the detention of children under protective custody in police stations or other facilities related to the criminal or immigration systems. The Working Group further recommended that the authorities ensure that unaccompanied children are transitioned to community-based care, foster care, supported independent living, and the gradual reduction of institutional structures.

C – European Union

1. The Charter of Fundamental Rights

“Article 24
The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

2. In all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration.

...

Article 34
Social security and social assistance

3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.”