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Communication from the United Nations High Commissioner for Refugees (UNHCR) (15/05/2019) in the M.S.S. and Rahimi groups v. Greece (Applications No. 30696/09, 8687/08)

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Communication de « United Nations High Commissioner for Refugees » (UNHCR) (15/05/2019) dans les groupes d'affaires M.S.S. et Rahimi c. Grèce (requêtes n° 30696/09, 8687/08) (**anglais uniquement**).

Informations mises à disposition en vertu de la Règle 9.3 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.



Recommendations

by the Office of the United Nations High Commissioner for Refugees (UNHCR)

**concerning the execution of judgments by the European Court of Human Rights (ECtHR) in the cases of
M.S.S. v. Belgium and Greece (Application No. 30696/09, Grand Chamber judgment of 21 January 2011)
and of Rahimi v. Greece (Application No. 8687/08, Chamber judgment of 05 April 2011)**

Introduction and scope

These recommendations, addressed to the Greek Government, are submitted by UNHCR in the context of the supervision by the Committee of Ministers of the Council of Europe over the execution of the ECtHR's judgments in the cases of *M.S.S. v. Belgium and Greece* (No. 30696/09, Grand Chamber judgment of 21 January 2011) and of *Rahimi v. Greece* (No. 8687/08, Chamber judgment of 05 April 2011), and aim at providing specific clarifications on key aspects of refugee protection in Greece, as presently observed. These recommendations should be read in conjunction with UNHCR's 'Explanatory Memorandum' of 2017.¹

UNHCR has been entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and, together with Governments, to seek solutions for the problem of refugees.² Paragraph 8(a) of its Statute and the Preamble of the 1951 Convention relating to the Status of Refugees ("the 1951 Convention")³ confer responsibility upon UNHCR to supervise the application of international conventions for the protection of refugees, whereas Article 35(1) of the 1951 Convention obliges States Parties to cooperate with UNHCR in the exercise of its functions, including in particular to facilitate its duty of supervising the application of the provisions of the 1951 Convention.

In accordance with its supervisory responsibility and in light of Greece's obligations under international refugee law, UNHCR also seeks to assist the Council of Europe's Committee of Ministers in its evaluation of the measures necessary for the execution of these judgments.

UNHCR appreciates the ongoing efforts of the Greek authorities to improve the country's asylum and reception systems, and places considerable value on the legislative initiatives that have taken place during 2018, in particular with respect to the protection of unaccompanied children in Greece.

Overall conditions prevailing in Greece for asylum-seekers and refugees have been directly affected by the 2015 refugee influx and ensuing policies. Greece currently ranks 3rd (third) among EU countries, in the number of asylum applicants,⁴ the majority of whom originate from some of the world's top 'refugee-producing' countries: Syria, Afghanistan, and Iraq. The application of the March 2016 EU-Turkey Statement, aiming at reducing irregular arrivals to Europe, requires that administrative procedures, including access to asylum, identification of protection needs and individual vulnerabilities, and, in many instances as outlined below, refugee status determination and returns of rejected or inadmissible asylum applicants, take place at border areas (specifically, on five island locations also declared 'HotSpots'). Asylum-seekers, depending on their profile or needs, can remain for months or even a year at Greece's border areas, in substandard conditions because of overcrowding, - particularly on the island of Samos and until recently on Lesbos -, until allowed to freely move to the mainland or until they are returned to Turkey. Those allowed to move as asylum-seekers, including asylum-seekers entering the territory through the land border region of Evros, seek shelter and services within the overstretched second-line reception system. A great number of asylum-seekers, particularly in Evros, remain without registration of their asylum application and, consequently,

¹ Explanatory Memorandum pertaining to UNHCR's submission to the Committee of Ministers of the Council of Europe on developments in the management of asylum and reception in Greece, available at: <https://rm.coe.int/1680717876>.

² UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, A/RES/428(V), para. 1, available at: <https://www.refworld.org/docid/3b00f0715c.html>.

³ UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations Treaty Series, vol. 189, p.137, available at: <https://www.refworld.org/docid/3be01b964.html>.

⁴ Eurostat, 4th Quarter 2018, available at: https://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_quarterly_report#Where_do_asylum_applicants_go_to3F.

without assistance with shelter and cash. Additionally, both shelter and cash assistance will from now on cease after a 6-months' grace period for beneficiaries of international protection who will pursue the challenging path of self-reliance and integration. Although this termination of assistance had already been previously announced by the authorities, it is only recently that it is being implemented for beneficiaries of international protection who have received assistance for more than two years.

Recommendation no. 1: improve access to and quality of the asylum procedure

Since 2016 and up to the present time, Greece has experienced an important increase in the number of asylum applications with 66,968 applicants registered in 2018. At the same time, the implementation of the EU-TUR Statement of March 2016 established an accelerated border procedure on the Greek islands, where about 46% of all applications in Greece are lodged. In order to respond to this situation, the Greek Asylum Service grew both in capacity (200 staff in 2013, 670 in 2017, and it is expected to reach 800 by end 2019) and in geographical coverage (initially operational in 5 locations, 17 in 2017, 23 in 2018). Support by organizations also grew, with EASO mostly focusing on the border procedures, while UNHCR increased its quality assurance support covering all operations of the Asylum Service across the country. The top 3 nationalities of asylum-seekers for 2018 were Syrians (20%), Afghans (18%) and Iraqis (15%), while the vast majority (around 70%) of all applicants in the islands are being identified as vulnerable cases, including individuals whose vulnerabilities worsened after having spent several months in dire conditions in overcrowded reception centres. In 2018, UASC constituted 4% of applicants. Recognition rates (refugee status and subsidiary protection) increased in 2018, from an average of 46% in 2017 to 49.4% in 2018.⁵

While access to asylum for arrivals on the islands is guaranteed and fast, access on the mainland remains challenging. With respect to the Evros region, UNHCR remains seriously concerned over continued allegations of 'push-back' (informal forced returns), which appear to affect hundreds of third-country nationals summarily returned without an effective opportunity to access procedures or seek asylum. Persons channelled to formal registration and identification procedures in the Reception and Identification Centre (RIC) of Fylakio, in Evros, can apply for asylum during their stay in the RIC where their movements are restricted for registration and identification purposes for up to 25 days. At times of overcrowding in the RIC in Evros, new arrivals may be directed to detention facilities in the region instead of the RIC. A number of persons from so-called 'refugee-producing countries'⁶ may be directly released, with a 6-month suspension of the deportation decision, but without having had the opportunity to apply for asylum. This is problematic as many thousands of persons on the mainland are still having difficulties accessing the Skype system in place for registration, which has limited capacity and is dependent on limited availability of interpretation. Persons on the mainland have to wait around 1-2 months to get through a Skype line, depending on the language, while actual full registration takes another 3-4 months on average in two of the main Asylum Offices, Attica and Thessaloniki. Vulnerable populations wishing to apply for asylum on the mainland are to a large extent effectively prioritized, thanks to the efforts and methodology applied locally by Asylum Offices. Having invested a large part of its total capacity and external support on its operations on the islands and the hotspots, the Asylum Service is currently experiencing a rapidly increasing backlog of cases on the mainland, as vulnerable populations are transferred from the islands to the mainland and are added to the mainland caseload.

Delays in interview scheduling times all over Greece are indicative of the extent of the current challenges. In Attica, the Fast-track Syria Unit applicants receive interview appointments for 2021, while in Thessaloniki interview dates are currently given for 2024 for applicants from Turkey, Iran and Afghanistan, and for late 2023 for Iraq and for African countries. While the Asylum Service has issued a large number of decisions in 2018 (46,155 in total), demonstrating the positive results of its capacity enhancement, the size of the caseload and the constant increase in the number of new asylum applications requires further significant increase in capacity and performance of the AS. Furthermore, while the quality of first instance examination remains largely in line with international and European recommended standards and procedural safeguards, UNHCR has observed a deterioration in quality at first instance as a result of the pressure resulting from the large pending caseload (62,418 as of 31/3/2019). Applications are being examined as fast as possible by a team of caseworkers, many of whom are new and not sufficiently trained and supported locally. With regard to second instance, there was, as of 31/12/2018, 13,746 pending cases. The average processing time, from appeal submission until decision issuance was 235 days in 2018,

⁵ Rates calculated from 2013 up to 31/3/2019 only on decisions on the merits, Asylum Service Statistics available at: [http://asylo.gov.gr/wp-content/uploads/2019/04/Greek Asylum Service data March2019 gr.pdf](http://asylo.gov.gr/wp-content/uploads/2019/04/Greek%20Asylum%20Service%20data%20March2019%20gr.pdf).

⁶ These include Syrians, Iraqis, Palestinians, Somalis, Eritreans, citizens of CAR, Yemen, Myanmar, Mauritania and south Sudan.

already exceeding the time limits foreseen in Greek law. In addition, the Greek administration must still adjudicate 3,560 pending cases from 2015-2016 at appeals stage. The increase of the number of the Independent Appeals Committees from 12 to 20 in early 2019, is expected to have a positive impact on the pace of examination and decision issuance.

Recommendation no. 2: increase reception capacities and improve reception conditions of asylum-seekers

First-line reception: Upon interception, irregularly entering third-country nationals are to be channeled to the Reception and Identification Centres (RICs). There are six RICs at the border entry points with the mandate to manage the reception of new arrivals in Greece known as 'first line' reception. New arrivals have to go through the reception and identification procedures: registration; nationality screening; information provision, medical and psychosocial screening; and referral to further administrative treatment. In accordance with national law, the RICs are foreseen to operate as closed facilities for a maximum period of stay ('restriction of liberty') of up to 25 days. In practice however, five of the RICs located on the islands of Lesbos, Chios, Samos, Kos and Leros have a dual role and operate as open centres hosting persons well beyond the 25 day period.

In particular, asylum-seekers are under a restriction of movement (obliged to remain on the islands) until their cases (i) are deemed 'eligible' to be further examined under the 'regular procedure' in the mainland, or (ii) reach a final decision. In the case of examination under the regular procedure (point i above), a lift of the geographic restriction enables asylum-seekers to move to the mainland. The decision for an asylum-seeker to be referred to the regular procedure is taken centrally by the Asylum Service on the basis, in particular, of vulnerability and eligibility for family reunification under the Dublin III Regulation. In the case of final decision by the Asylum Service or the Appeals Committees (point ii above), asylum-seekers will be either granted international protection (1951 Geneva Convention Status or subsidiary protection), and will be thus free to move within the Greek territory, or their application will be rejected and referred to the process of return or readmission. In the absence of alternative accommodation on the islands, the majority of asylum-seekers subject to restriction of movement decisions continues to stay inside the RICs. Asylum seekers on the islands receive only partial cash assistance as they receive food assistance.

Existing structures in the RICs on the Greek Aegean islands, in particular on Samos and Lesbos, are far below acceptable standards due to the severe overcrowding and insufficient provision of services (shelter, WASH, medical and psychosocial, support to women and girls, family and child spaces, protection, NFIs, interpretation and other services). Some 10,680 people presently stay in the five RICs for an estimated capacity of 5,400 in total. The limited number of doctors and medical staff based in the RICs affects the provision of primary healthcare, as well as the timely implementation of vulnerability assessments which is a determining factor in border procedures. Thousands of people are staying in summer tents, rubhalls or makeshift shelter, in particular in the overcrowded RICs on Samos and Lesbos, and also on other islands where these became overcrowded. Asylum-seekers are exposed to health risks and safety hazards, while there is limited privacy for families and women. Persistent overcrowding, in Samos and Lesbos in particular, and current shelter allocation arrangements leave single women and unaccompanied children unprotected. Sexual harassment and violence, including against men and boys, constitutes a major risk with the limited number of specialized services exacerbating feelings of insecurity.

The Greek Government has recently adopted emergency measures to alleviate overcrowding on Samos, where the situation has been most difficult, by lifting the geographical restriction of vulnerable asylum-seekers and allowing them to travel to the mainland. However, as of 8 May 2019, the population on Samos Vathy RIC has reduced, but remains at 2,887 people compared to the 660 estimated capacity. The Moria RIC has twice surpassed its estimated capacity of 2,200 and hundreds of the 4,680 people who live in the RIC have spread out to nearby fields. The RICs on Kos (1,255 vs. 698 capacity) and Chios (1,122 people vs. 1,100 capacity) are also at above capacity or at capacity and struggling to provide adequate services to its residents. On Leros, the situation is better overall, with the two official establishments remaining within their limits and hosting 872 people.

In 2015, UNHCR supported the Municipality in Lesbos to establish and manage a secondary site, Karatepe, which hosts families and persons with specific needs who cannot remain in Moria. UNHCR continues to support the operation of Karatepe up to now, in coordination with the municipal authorities. Since mid-2018, UNHCR also provides technical assistance support to the Central Service of the Reception and Identification Service (RIS), with the aim of improving its operational capacity on first and second line reception. Efforts by central authorities to establish secondary sites on other islands in order to alleviate the pressure in the RICs have been impeded by the negative reactions of local communities.

The only RIC which continues to operate as a closed facility, is the one in the land Evros region (Fylakio). New arrivals, including families and children, once detected and apprehended by the authorities may be firstly transferred to a border guard police station or the pre-removal center in Fylakio, adjacent to the RIC, where they remain in detention (so called 'pre-RIC detention') pending their transfer to the RIC Fylakio. Prolonged 'pre-RIC detention' has occurred in instances where new arrivals surpassed the accommodation capacity of RIC Fylakio. Persons undergoing reception and identification procedures at the RIC of Fylakio are under restriction of liberty which cannot last more than 25 days. Asylum-seekers are released either directly from the Police after having registered their will to seek asylum or from the RIC, upon the completion of reception and identification procedures and the registration of their asylum claim, unless special grounds apply for their continued detention, as prescribed by law. Upon release, asylum-seekers from Evros are presently not referred by the State to open reception facilities due to both lack of space in the existing camp-like centres in the North and the priority given to the referrals from the islands.

Second-line reception: Second-line reception refer to open accommodation facilities on the mainland to differentiate from Reception and Identification Centers at border entry points where first reception and identification procedures take place.

The second-line reception capacity for asylum-seekers in mainland Greece has increased considerably in the last five years, from approx. 1,000 places in 2014 to 50,000 places in 2019. Greece's reception system on the mainland comprises State-run camp like reception facilities, temporary hotels and UNHCR's urban accommodation scheme 'ESTIA'. In May 2019, approx. 22,000 persons resided in ESTIA and 25,500 in other types of reception facilities. The steady inflow of asylum-seekers in need of accommodation (2019 monthly arrivals in Greece: 2,708 and average transfers to second-line reception: 1,311) and the very low outflow (monthly average from ESTIA accommodation: 265 asylum seekers/471 recognized refugees), mainly due to limited reception alternatives for refugees, result in continued shortages in reception places for asylum-seekers. Currently, 3,964 asylum-seekers are on the waiting list for ESTIA accommodation, while as of March 2019, 3,730 persons on the islands had their geographical restriction lifted and were only awaiting accommodation to be transferred to open reception sites (camp-like facilities) on the mainland.

Reception conditions vary greatly depending on accommodation. State-run reception facilities established as emergency arrangements in 2015-2016 have significantly improved, however, some continue to be below standards provided under EU and national law, especially for long-term living. The main gaps relate to the remote and isolated location, the type of shelter (most housing units are in ISO boxes), lack of security, and limitations in access to social services, especially for persons with specific needs and children. These living conditions coupled with a lack of clarity on future prospects over sustainable livelihood, have a detrimental impact on mental wellbeing. In 2019, only three facilities on the mainland are officially operating under the management of the Reception and Identification Service (RIS). The other 23 open reception facilities operate with the support of Site Management Support (SMS) agencies under the coordination of the International Organization for Migration (IOM), and has been pending official establishment under RIS for over three years. Related draft law provisions are pending submission to the Parliament. The non formalization of most open reception facilities under the competence of RIS results in the absence of clear and organized coordination structures (lack of Director, no officially binding regulations, unclear responsibilities and accountabilities) on behalf of the Government and gaps in appropriate responses (e.g. security in the facilities). Temporary hotels also became operational by end 2018 to respond to urgent needs for additional reception places. These are 70 hotels on the mainland managed by IOM. As of May 2019, more than 6,800 asylum-seekers reside in these hotels. The initial plan for closure in April 2019 has been extended until June 2019, due to the lack of alternative reception capacity. Conditions in the hotels vary, with many being in isolated locations.

Reception conditions in ESTIA are of higher quality. Provisions include accommodation in apartments or buildings in the urban context, cash assistance and supporting services (transportation, interpretation, referrals to public services and psychosocial support services for persons with specific needs). All beneficiaries are provided with legal counselling and referred to legal aid organizations, where needed. The main challenge of ESTIA is the low turnover, resulting in limited new available places. Although provided for asylum-seekers, beneficiaries of international protection have benefited from the programme for more than two years. In May 2019, more than 7,000 recognized refugees continue to reside in ESTIA accommodation. However, according to relevant legislative framework adopted in 2019,⁷ beneficiaries of international protection will be obliged to exit the apartment scheme following a grace period of six (6) months, unless exceptionally vulnerable. The Greek Authorities are expected to take over ESTIA accommodation in 2020 and UNHCR is supporting the competent authorities to develop their systems to that end,

⁷ Ministerial Decision of 12 April 2019 on the determination of the implementation framework of the cash assistance and accommodation programme 'ESTIA'.

including through a Technical Assistance Project funded by the EC. Although there is progress in the elaboration and adoption of the regulatory framework setting the foundations for the future programme under the Greek authorities, there is still a serious lack of human resources and progress on the design of the new management model.

Finally, an important improvement in reception is that asylum-seekers who entered Greece after January 2015, receive, through UNHCR's ESTIA programme, cash assistance to cover basic needs (food, clothing, and daily expenses). A total of 69,895 persons were eligible for and received cash assistance in April 2019, while a total of 114,260 persons have benefited from cash assistance under UNHCR's Programme and have received cash assistance at least once since April 2017.

Recommendation no. 3: improve the protection of unaccompanied and separated children (UASC)

As of 31 March 2019, the estimated number of Unaccompanied and Separated Children (UASC) in Greece was 3,774 (93.9% boys and 6.1% girls). Appropriate care arrangements are still unavailable for most UAC in Greece. Currently, only 25% of unaccompanied children (UAC) are in long term care (i.e. shelters or Supported Independent Living), whilst 23% reside in interim/temporary accommodation such as the "Safe Zones" (7%) in mainland sites or IOM-run hotels (16%). The remaining children are either in the Reception & Identification Centres (RICs) on the islands (17%), protective custody (2%) or in other informal arrangements (8%) in the urban or camp contexts. A significant number of UAC (16%) are homeless, or have no reported location (4%).

The care and protection situation in the RICs for UAC is deplorable, particularly in Samos and Lesvos. Upon arrival on the islands or the land border of Evros (where they are first detained), UAC are kept in the RICs. The children live in various locations, including the overcrowded arrival areas, placing them at great risk of abuse and exploitation. The state of the UAC containers in Samos for example is below all standards, without doors, windows and with an occupancy rate of up to 18 children, sleeping in shifts. There is a severe lack of hygiene, mattresses, and proper toilets, monitoring is weak and outsiders can enter easily. In addition to the risks these entail, such conditions are likely to contribute to further trauma for exposed children. Reported incidents of UAC using drugs and violence towards themselves or RIC personnel are on the increase and are both worrying and illustrative. Delays also result in UAC staying in RICs up to one year. The Greek authorities should complete all relevant procedures in RICs within 25 days. Yet, the limited capacity on registration (Police, FRONTEX) and in the medical and psychosocial units responsible for age and family links assessment (run by services of the Ministry of Health) and the lack of available care places in mainland all contribute to the prolonged processing and stay of children in RICs, lacking also child-friendly communication materials and information about complaints and feedback mechanisms.

It remains exceptional for UAC to end up in optimum care arrangements in Greece. The majority are referred to institutional care on the mainland run by IOM and NGOs. Whereas these shelters are critical in the provision of places, institutional care does not represent best practice. Meanwhile, interim care measures such as the hotels, Safe Zones and the open accommodation facilities have become semi-permanent, leading to the erosion of minimum care standards for UAC. UNHCR is supporting foster care for the younger UAC and a small number of older UAC are hosted in the appraised Supported Independent Living setup by UNHCR and UNICEF and implemented by Metadrasí and Praxsis. This model has been adopted by Greece as the best care model for scale-up where needed, including following advocacy by UNHCR and other actors. The last two years have also shown a reduction of UAC in protective custody in Greece and the Hellenic Police is now managing to accelerate and complete referrals within maximum 2-3 weeks (80 to 100 UAC are in custody weekly). The invisible UAC in informal accommodation, reported to be homeless or without location, continue to be of grave concern.

On a positive note, the new guardianship law is an important protection development in Greece. With the guardianship law 4554/2018, a guardianship system and the formalisation of best interest assessment and determination procedures are for the first time established in Greece. Covering non-Greek nationals and stateless UASC, the law introduces the possibility of appointing professional guardians under EKKA, establishing a Supervisory Board for Guardianship, and expressly provides that a Best Interest Assessment should precede decisions. However, the law demands six regulatory acts for its full implementation, which are all pending. As part of a tripartite agreement, UNHCR is working with EKKA, MoL and a local NGO to temporarily implement and transition this responsibility to EKKA and the national funding program (AMIF) by September 2019. This transition to the guardianship program aims at the operationalization of EKKA through seconded staff who act as guardians for UAC (until the relevant ministerial decisions are issued) for the protection and safeguarding of 950 unaccompanied children residing across Greece (in protective custody, RICs, Hospitals, Shelters and SIL, IOM Hotels and Safe zones) including homeless children.

Recommendation no. 4: improve detention conditions and strengthen safeguards of asylum-seekers in administrative detention

Since 2015, administrative detention of asylum-seekers has become less restrictive in law and it is no longer broadly applied as a systematic punitive and deterrence measure, as in the past (except for Evros, as outlined above). However, conditions and procedural safeguards continue to be problematic. As of 2/5/2019, 1,589 third-country nationals were detained in the eight pre-removal centres;⁸ almost 79% of them were asylum-seekers, while there were 49 unaccompanied minors and 11 women. Some of the main deficiencies of concern to UNHCR include: detention in police and port police stations, which are totally inappropriate for longer periods of detention; seriously substandard conditions of detention in the pre-removal centres, in particular in P. Ralli in Athens and Fylakio at Evros; inadequate individual assessment of the appropriateness of the measure of detention; detention exceeding the 3 months' maximum time limit provided by law, due to delays in the registration of the asylum applications; lack of effective access to an ex-officio judicial review; and inadequate legal aid provision. In addition, while the law allows for detention only exceptionally and provided that removal arrangements are in progress and executed with due diligence, detention is also imposed when the prospect of removal is not reasonable or imminent. Lastly there is no consideration of alternative measures to detention. Detention might also be extended, including for vulnerable asylum-seekers, because of lack of adequate reception capacity. UNHCR continues to be particularly concerned about the detention of UASC on the ground of "protective custody", until their placement in a shelter.

Final observations

Asylum procedures, reception conditions and child protection have seen uneven improvements in Greece, as a result of multiple challenges and the need to reconcile the demands of developing a comprehensive reception system while at the same time responding to the high number of asylum-seekers and refugees who have arrived since 2015-2016. The building of a sustainable and adequate asylum and reception system in Greece for all asylum-seekers including groups at high risk such as unaccompanied children will be a long-haul process, which will move faster if accompanied by solidarity measures within the EU and sound understanding of the operational and institutional context.

UNHCR
May 2019

⁸ According to Police data; UNHCR does not receive data for number of detainees in the police stations.