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Contact: Clare Ovey
Tel: 03 88 41 36 45

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Meeting: 1288th meeting (June 2017) (DH)

Communication from an IGO (UNHCR) (05/05/2017) in the case of M.S.S. v. Belgium and Greece (Application No. 30696/09)

Information made available under Rule 9.3 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1288^e réunion (juin 2017) (DH)

Communication d'une OIG (UNHCR) (05/05/2017) dans l'affaire M.S.S. c. Belgique et Grèce (Requête n° 30696/09) **[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.



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

Scope of UNHCR's submission

The present submissions are submitted to the Committee of Ministers of the Council of Europe in the context of the supervision of the execution of the *M.S.S. v. Belgium and Greece* judgment. They address three thematic areas: access to and quality of the asylum procedure (Chapter I), reception conditions of asylum seekers and of unaccompanied and separated children (Chapter II), and administrative detention of asylum seekers (Chapter III).

Since the judgment in *M.S.S. v Belgium and Greece* in January 2011, there have been improvements in the asylum procedures in Greece. There are now much higher recognition rates (as elaborated below) as well as improved reception capacity. Furthermore, the reception and identification procedures are now conducted within fifteen (15) days. However, notwithstanding this progress, and the important support provided by the European Union, UNHCR and a wide range of non-governmental actors, the significant operational, institutional and legal developments that have taken place in the last two years and the influx of large numbers of refugees in 2015 and 2016 have stretched the country's capacity. Challenges related to reception, asylum capacity and procedures, protection of persons with specific needs, and SGBV prevention and response, still persist.

It is acknowledged that Greece faces many challenges related to responses to the arrival of significant numbers of asylum-seekers and other people at Greece's maritime shores, including its islands, over recent months. These arrivals have exacerbated pressures on the asylum and reception system, as Greece has sought to respond to these demands. As such, they are relevant to the general functioning of the Greek asylum system in the present circumstances, and as such, to the processes and conditions which were addressed in the *M.S.S.* judgment.

Chapter I: Access to and quality of the asylum procedure

Asylum procedures in Greece have been fundamentally restructured since 2013, with the establishment of the Asylum Service (AS) and the Appeals Authority at second instance. Overall, procedural safeguards have considerably improved, including much higher recognition rates. For example, recognition rates at first instance, which prior to 2013 were close to zero, but in 2014 they averaged 28.7% ; in 2015, 47.4%; and in 2016, they were 29.1%. The recognition rates are even higher when we look at countries that traditionally have high recognition rates. For example, in 2016, the recognition rate for Syrians was 99.1%; Palestinians 92.9%; Iraqis 66.5% and Afghans 48.8%¹.

That said, the large influx of 2015-2016 had a severe impact on the Greek asylum system. While in 2015 the AS registered 13,195 applications, 51,091 applications were registered in 2016. In summer 2016, 27,592 applications were pre-registered through a one-off exercise with the support of UNHCR and EASO and not through the regular registration system of the AS, which uses Skype as described below. The AS also increased

¹ AS statistics: http://asylo.gov.gr/en/wp-content/uploads/2017/03/Greek_Asylum_Service_Statistical_Data_EN.pdf

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its geographic presence throughout the country, currently operating in 17 locations, whereas in 2015, it was operational in 9 locations, and its staff tripled in 2016.²

In 2016, the AS had to respond simultaneously to three demanding processes: the “border procedures”; the relocation scheme; and the pre-registration exercise on the mainland. These have affected access to procedures, effective procedural safeguards, timely processing, quality of procedures and the treatment of vulnerable persons, particularly unaccompanied children.³ The processing of cases eligible under the EU relocation scheme to other EU member States (12,900 outgoing requests in 2016⁴), and of family reunion cases pursuant to the Dublin Regulation (4,886 outgoing take charge requests in 2016⁵) compounded the delays incurred by the ‘mainstream’ system. UNHCR estimates that significant delays will be incurred as a result and that the processing of applications at first instance may in some cases last up to two years. The lack of capacity to fully process asylum claims within a reasonable timeframe may in turn impact the quality of the adjudicatory process, and likely contribute to rising tensions in many of the reception sites, lead to further onward movement, and prevent the timely implementation of durable solutions.

I.1. Regular Asylum Procedures at First Instance

The only option for those who currently intend to apply for asylum on the mainland is to pre-register through the AS’s Skype system. This process presents serious deficiencies due to limited capacity and availability of interpretation but also because applicants cannot always have access to the internet. Numerous complaints have been made by applicants and NGOs, about busy lines and the impossibility to get through. Whilst the full lodging of the applications has now been completed for all persons pre-registered during the summer 2016 thanks to the pre-registration exercise conducted by the Greek authorities with the support of UNHCR and EASO, persons who recently pre-registered may have their full registration delayed until early 2018, depending on the capacity of the asylum office where they register and on their nationality and spoken language. For some of the nationalities for which delays are anticipated, special Asylum Units have been created⁶ in an effort to reduce the lodging and examination times. Pre-registered applicants are entitled to stay lawfully on the territory and have access to medical care but cannot work until fully registered. Access to asylum for vulnerable individuals, including unaccompanied and separated children (UASC), remains a challenge. Despite the existence of an asylum unit dealing exclusively with vulnerable persons, demand currently exceeds capacity. As things currently stand, the requirements in EU and national legislation that a claim be “lodged” immediately or as soon as possible after the “making” of an application, are not met.

Despite undeniable improvements, there is a significant number of pending cases (31,122 persons up to 31/01/17⁷) and first instance examination for some applicants could last up to two years. While processing times may vary depending on location, some of those asylum-seekers who currently lodge their applications in the largest regional asylum office (Attica), may have their interview scheduled for as late as autumn 2018.

Vulnerable cases, including UASC, are currently exempted from the borders procedure on the islands and are considered under the regular procedure on the mainland. Although UASC and vulnerable individuals are being prioritized, increased numbers (there were 420 applications of UASC in 2015, and 2,352 in 2016⁸), have generated further delays, as expert capacity of the AS is not yet sufficient. The absence of a national

² From 250 staff by end 2015, the AS reached 650 staff by end 2016.

³ The Greek legal framework makes no distinction between unaccompanied and separated children.

⁴ AS statistics on relocation: http://asylo.gov.gr/en/wp-content/uploads/2017/03/Relocation-procedures-up-to-12-03-17_en.pdf

⁵ AS press release, The work of the AS for the year 2016 -17/01/2017: <http://asylo.gov.gr/en/?p=1946>

⁶ Autonomous Asylum Unit (AAU) for examination of applications by nationals of Pakistan, AAU for fast-track examination of Syrians, and AAU for Albanians and Georgians.

⁷ AS statistics, see footnote 1.

⁸ AS statistics, see footnote 1.

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guardianship system and the gaps in the legal representation of UASC when lodging an application for international protection, especially for UASC younger than 15 years of age⁹, creates further difficulties.

In spite of improvements in the quality of first instance decisions,¹⁰ maintaining and further improving the procedure remains a concern. New and sometimes inexperienced and insufficiently trained staff hired to respond to the emergency have been an issue. Ongoing pressures in the admissibility, relocation, Dublin, and regular procedures to shorten processing times, are another concern. The quality and legal departments of the AS have had to primarily focus on managing the border procedures on the islands and the large training needs of new staff. The support provided by EASO mostly in the relocation and admissibility procedures, but also in terms of training and country-of-origin (COI) material, is valuable, but more support is needed to address the multiple and increased needs of the AS. Legal aid, according to Law 4375/2016 is now available free of charge at second instance (provided since July 2016 by UNHCR, through implementing partners until the State assumes its responsibility as set in the law) but not at first instance, where there are increased needs and only a limited number of services is provided through some specialized NGOs. The quality of interpretation services is generally good, however, capacity (number of available interpreters and languages covered), although supported significantly by EASO, remains a challenge impacting negatively the examination pace.

Regarding UASC, the lack of a proper guardianship system and the limited access to legal aid, as well as the procedural delays, result in lower safeguards. A number of UASC might become adults while waiting to access and complete the procedure, which may negatively impact their rights particularly their right to family reunion. Moreover, serious problems in the implementation of age assessment procedures¹¹ have in some cases prevented children from exercising their rights.

I.2. Appeal stage

The Independent Appeals Committees (IAC)¹², have been directly impacted by pressures to accelerate their productivity, in particular for the accelerated “border procedures”. However, the IACs are limited by the fact that the judges have to carry out their regular judicial tasks in their respective positions within the courts, in addition to their functions on the Committees, and by the lack of expert support as regards country-of-origin information. At the end of 2016, there were a total of 6,193 cases¹³ (of persons) pending before the IACs. The IACs which have been operational since late July 2016, have not achieved a stable pace of examination yet and have rendered a small number of decisions. Current examination time far exceeds the three month limit foreseen in the law. The doubling of the number of IACs since February 2017 (13 in total) is still insufficient compared to the number of cases; in addition, the Appeals Authority has prioritized the examination of the applications for asylum-seekers on the islands, which further delays the examination of appeals by asylum-

⁹The appointment of a guardian for unaccompanied children lodging an application for international protection, is provided also in Article 45 of Law 4375/2016 in conjunction with Art. 19 of Presidential Decree 220/2007, whereas the mandatory legal representation for unaccompanied children younger than 15 years of age, is prescribed in Article 36 par. 8 and 9 of Law 4375/2016.

¹⁰ UNHCR, in accordance with Law 4375/2016 and a memorandum of cooperation concluded with the AS, ensures quality assurance of the first instance asylum procedures through a team of experts; this team provides advice on legal and procedural issues on decisions and interviews, performs COI tasks, and supports the various AS departments in legal, procedural and training related issues.

¹¹ See the new Joint Ministerial Decision 1982/2016 on the age assessment procedures initiated by the AS, when there are serious doubts about the age of a person lodging an application for international protection. However, medical exams are not always feasible, due to the insufficient structures of the public health institutions or might have divergences among institutions. Moreover, they might lack a multidisciplinary and holistic assessment and might be subject to a high margin of error. Another issue concerns a common practice of the AS not to challenge any age assessment conducted by the RIS (i.e. when the person before the AS is manifestly minor), unless valid documents are presented, which are not always possible for the minors to present.

¹² The Independent Appeals Committees established under Law 4375/2016, as amended by Law 4399/2016

¹³ AS statistics, see footnote 14.

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seekers on the mainland. Furthermore, the compliance with the Greek Constitution on the composition of the IACs is still pending adjudication by the Grand Chamber of the Council of State.¹⁴

Chapter II: Reception of asylum seekers and of unaccompanied and separated children

For the purposes of this chapter, second-line reception conditions refer to conditions in open accommodation facilities, either in camp-like facilities or urban shelters, to differentiate from Reception and Identification Centers at entry points (open or closed, also referred as 'Hotspots') where first reception and identification procedures take place.

Although Greece has initiated the transposition of the Reception Conditions Directive (RCD) (recast)¹⁵, it has not yet been transposed and adopted into law¹⁶. Furthermore, while Law 4375/2016 established a more comprehensive structure of reception services, these have not been created and/or become operational yet.

Since October 2015, reception capacity on the Greek mainland rose significantly from a bit more than 1,000 places at the beginning of 2015 to approximately 50,000 by end 2016. The 30,000 reception places the Greek Government committed to establish in October 2015 were established in camp-like facilities and the Greek authorities, including central Government and local authorities, undertook significant effort in having these facilities gradually operational on an emergency mode. The number of camp-like accommodation facilities on the mainland has changed overtime and in March 2017, there were 32¹⁷ camp-like facilities operational, hosting some 16,000 asylum seekers and ranging from between 40 and 3,000 persons per facility. The Greek Government's plan is to close these facilities by end 2018 with most of them closing down gradually until end 2017; residents will be gradually transferred to urban accommodation (e.g. apartments), including through support by the local authorities. The camp-like accommodation facilities fall under the overall competency of the Ministry of Migration Policy (MoMP) but they are, in practice, managed by various authorities, including representatives of MoMP, the Hellenic Armed Forces or local authorities. Only three facilities in the Greek mainland have been officially established under the competency of the Reception and Identification Service (RIS).¹⁸

Conditions in accommodation facilities vary, and some continue to be considerably below the standards set out by EU and national law. Most of the facilities established on an emergency mode lacked appropriate conditions especially for acceptable living as a second-line facility. This is the case for facilities that are not suitable for human habitation, such as the remaining warehouses in central Macedonia and the remaining informal sites in Attica, which should be immediately closed. One main challenge in the area of reception is the lack of clear and organized coordination structures, including comprehensive referral procedures, on behalf of the Greek Government, in order to ensure a coherent and efficient response where gaps are addressed, overlap avoided and resources optimized.

Through its shelter, water-and-sanitation, non-food items, winterization and protection interventions, UNHCR, in cooperation with central and local State authorities, has made a significant contribution to the improvement

¹⁴ The hearing before the Grand Chamber of the Council of State took place on 10 March 2017, and the final judgment is still pending.

¹⁵ Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), 29 June 2013, <http://www.refworld.org/docid/51d29db54.html>

¹⁶ A draft law was published for public consultation in October 2016 and the law was expected to be adopted by end 2016 ; however, it is still pending. UNHCR has provided a legal commentary to the draft law.

¹⁷ Data as of 16th March 2017 (UNHCR data drawn from the SMS [Site Management Support] National Coordination Group).

¹⁸ Until March 2017 the accommodation facilities in Diavata, Schisto and Elaionas were established through a Joint Ministerial Decision as provided by L.4375/2016.

of the living conditions in some of the state-run open accommodation facilities¹⁹ while other humanitarian agencies also contributed in improvement works. The main gaps currently relate to the use of facilities designed for other purposes²⁰, remote and isolated location of the facilities, lack of security²¹ and limitations in efficient and appropriate services to properly respond to the needs of the residents, especially for persons with specific needs and children.²² These living conditions coupled with a lack of clarity on future prospects over sustainable livelihood have a detrimental impact on asylum seekers' health²³ and mental health²⁴. UNHCR has been advocating for the closure of the facilities which were designed for other purposes and cannot be improved such as the warehouses in Northern Greece and Elliniko.²⁵ Elliniko is still operational, while out of the eight warehouses in central Macedonia, only four have been closed down.

Although official figures suggest a capacity of available unoccupied spaces of approximately 30,000 places,²⁶ UNHCR, through its field teams, assesses that the actual capacity of places ready to be occupied in mid-March 2016 is lower, given that for example, some places are not in suitable shelters, lack electricity or other connections, and others need considerable repairs. KEPOM is the competent State body to implement and operationalize policies agreed by the Inter-Ministerial Council for the Refugee and Migration Policy,²⁷ and, in practice, it authorizes and coordinates referrals and transfers of asylum seekers to the camp-like

¹⁹In January 2017 works were completed on mainland Greece in the 15 camp-like accommodation facilities the Government assigned to UNHCR for winter preparedness. Tents in eight of the facilities were replaced with prefabricated houses and two were evacuated completely.

²⁰Some facilities set up in ex-army camps, warehouses or sports stadiums do not have the potential to improve either because works are not authorized (for example partitions to ensure privacy are not allowed in privately owned sports facilities) or the structures themselves do not allow for cost-effective improvement works.

²¹The lack of regularization of camp-like accommodation facilities results in gaps as regards responsibilities also over security. While police is present in most camp-like facilities, either through stable presence outside the facility or mobile presence, police interventions inside the facilities have been limited. There have been recorded deaths due to accidents and/or violence; there have been reports of violent groups as well as traffickers and smugglers operating inside accommodation facilities with impunity; there have been violent clashes with the host community. UNHCR has communicated its concerns to the competent Greek authorities but effective measures would require clear competencies and responsibilities. In a report by the National Commission for Human Rights issued following visits in four camp-like facilities the lack of security is highlighted

http://www.asylumineurope.org/sites/default/files/resources/kentra_filoxenias_autopsia.pdf

²² Especially for children, camp-like facilities are not conducive for long-term living as in many facilities appropriate services for children such child-friendly spaces and case-management are not in place. The lack of recreational activities for children has a significant impact on the emotional stability of the children leading to mental health problems.

²³ In July 2016 a Greek public health authority (KEELPNO) issued a report following monitoring visits in 16 facilities describing congestion of hundreds of people with insufficient potable water, very bad hygiene conditions, inappropriate food, lack of waste management. According to the report, long term living in such conditions increase the possibility of the appearance of transmitted diseases, epidemic diseases due to food or water, and have a negative impact on the psychosocial health of the population.

http://www.keelpno.gr/Portals/0/%CE%91%CF%81%CF%87%CE%B5%CE%AF%CE%B1/%CE%9D%CE%AD%CE%B1%20%20%CE%91%CE%BD%CE%B1%CE%BA%CE%BF%CE%B9%CE%BD%CF%8E%CF%83%CE%B5%CE%B9%CF%82/2016/%CE%93%CE%BD%CF%89%CE%BC%CE%AC%CF%84%CE%B5%CF%85%CF%83%CE%B7%20%CE%9A%CE%AD%CE%BD%CF%84%CF%81%CF%89%CE%BD%20%CE%A6%CE%B9%CE%B%CE%BF%CE%BE%CE%B5%CE%BD%CE%AF%CE%B1%CF%82_21-7-2016.pdf

²⁴ See report by International Medical Corps <http://mhps.net/resource/rapid-mhps-assessment-north-and-central-greece-2/> on the relations between everyday difficulties concerning food, hygiene, lack of privacy and lack of trust with mental health issues.

²⁵ Elliniko consists of three facilities, two sports stadiums and one ex-airport lounge. At its peak, more than 3.500 were hosted there in camping tents inside buildings or in family tents in the court of a baseball stadium. Approximately 1,400 persons still reside in unsuitable conditions for long-term living. The Danish Refugee Council has issued a public statement urging for its closure: https://drc.ngo/media/3139873/drc-urges-evacuation-of-elliniko-sites_eng.pdf

²⁶ Summary statement of refugee flows (14.03.2017). Official statistics published in : <http://mindigital.gr/index.php/%CF%80%CF%81%CE%BF%CF%83%CF%86%CF%85%CE%B3%CE%B9%CE%BA%CF%8C-%CE%B6%CE%AE%CF%84%CE%B7%CE%BC%CE%B1-refugee-crisis/1050-summary-statement-of-refugee-flows-14-03-2017>

²⁷ According to Act of Ministerial Council No. 7 of 19th March 2016, O.G. A/43/19.3.2016, an inter-Ministerial Governmental Council for the Refugee and Migration Policy was established. The Act makes reference to the competency of the Council to decide on the establishment of operational bodies to implement the policy decisions taken by the Council. Although KEPOM is formed on this legal basis there is no further reference to KEPOM in any legislative instrument.

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accommodation facilities. There is a need for a comprehensive mapping of the accommodation capacity available in such facilities, so as to facilitate proper planning by all involved actors. The lack of objective placement criteria has led to some nationalities being de-prioritized for timely referral to adequate sites. Furthermore statistics over the actual requests for accommodation, the non-satisfaction rate or waiting times, should be maintained, in order for referrals to accommodation to be better organized and effective.

These gaps have resulted in a significant number of asylum seekers resorting to informal housing in the urban context. In Athens only, UNHCR estimates an approximate 2,000-2,200 persons, in their majority asylum seekers, residing in 11 squatted buildings managed by solidarity groups.

As regards UNHCR's accommodation scheme, in March 2017, UNHCR maintained a capacity of approximately 18,700 places: over 13,000 in apartments and collective centres; 230 in host families; 4,363 in hotels and 732 in shelters for unaccompanied children²⁸. While the scheme was initially established to support the relocation scheme, UNHCR now also hosts an increasing number of vulnerable asylum-seekers whose needs are sometimes far above the capacity of an accommodation scheme designed for short stay. Despite efforts by UNHCR to readjust and strengthen the services, some facilities such as hotels, are not conducive to a long term stay of asylum-seekers with specific needs. In 2017, UNHCR is expected, through EC funding, to continue supporting the Greek Government in its plan to significantly increase accommodation in apartments and urban schemes, while phasing-out of camp-like accommodation.

Sexual and Gender-based violence

Sexual and gender-based violence (SGBV) risk mitigation measures²⁹ have not always been taken into consideration in the course of the design of emergency camp-like accommodation facilities and the implementation of activities, resulting in an increased risk of and vulnerability to SGBV. For example, from UNHCR's observations, in some accommodation facilities, shelter allocation is not in line with safety and privacy standards, shower and toilet facilities do not offer adequate privacy, lighting and sense of safety.

Isolation of certain facilities and lack of police or other security mechanisms during the night have contributed to the sense of insecurity and the risk of SGBV.³⁰ Limited access to services including education and health, poor living conditions, and scarce livelihood opportunities increase the risks of sexual exploitation, trafficking, survival sex, including among unaccompanied children.³¹ Service provision for SGBV survivors is inadequate in some regions and appropriate case management services are not available in many accommodation facilities.³² The

²⁸ Figures as of 16th March 2017. Figures change on a daily basis due to departures for relocation, new entries, creation of new places in apartments and collective buildings and gradual reduction of places in hotels. On 16th March 2017 approximately 15.400 asylum seekers resided in UNHCR's accommodation scheme.

²⁹ As outlined in the Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action by the Inter-Agency Standing Committee, 2015.

³⁰ UNHCR has received several reports and complaints, especially by female PoCs, regarding the lack of security and the risk of SGBV in several camp-like facilities. Furthermore, during the second semester of 2016, 336 SGBV incidents were reported to UNHCR, out of which 57% happened in Greece and 43% in transit or country of origin. However, UNHCR considers this number as the tip of the iceberg of the actual number for reasons related to the under-reporting of SGBV cases such as the lack or the limited available response services in many accommodation facilities during the reporting period, the stigma accompanying SGBV survivors.

³¹ There have been several reports of unaccompanied children and young adults engaging in survival sex in public parks in Athens, as well as in Thessaloniki, while the relevant response by state authorities have been limited. See interview with Suhail Abualsameed, UNHCR consultant on sexual exploitation and unaccompanied children, <https://www.unhcr.gr/nea/artikel/59db01238af3b47222edfa0c8c39638d/we-debunked-some-myths-about-the.html>

³² UNHCR is aware that in a limited number only of camp-like accommodation facilities there is a specialized and dedicated programme responding to SGBV. In many facilities, humanitarian agencies have assumed service provision to SGBV survivors in order to address the need, however, without having always the necessary capacity and expertise. In some accommodation facilities there are limited but fragmented services while in others there are no available services for the necessary multi-sectoral response to SGBV.

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language barriers and the absence of interpretation services in several state structures (police stations, hospitals)³³ render the provision of an appropriate responses more difficult and as a result, survivors often do not report SGBV incidents.

Reception of unaccompanied and separated children (UASC)

While efforts have been undertaken to strengthen the legal and institutional framework for child protection, significant protection gaps described in the previous chapters, have a particular impact on children affecting severely their social well-being, with heightened risks of sexual exploitation and abuse.³⁴ Children are more significantly affected by the lack of security; lack of specialized adequate services and sub-standard conditions in the camp-like accommodation facilities and RICs; limited access to education; family reunion processing delays and lengthy asylum procedures.

While several Ministries are involved, no overall authority is responsible to develop policies for the protection of UASC and the strengthening of services for children, including UASC, into the national child-protection system. However, there has been more involvement and engagement from the relevant authorities in terms of discussions around alternatives to detention and alternative care for UASC and other children at risk.

The Greek authorities have elaborated a draft law on guardianship, foreseeing a special national guardianship system for UASC which will fill, once adopted, a major gap³⁵ Greece is currently lacking national best-interests assessment and determination procedures for UASC and other children at risk.

There is a lack of adequate presence and coverage by child protection actors across Greece, in particular in urban settings, resulting in limited access for children to child protection services (health, psychosocial support, legal aid, family tracing, alternative care, education, durable solutions), as well as limited access to national services. Children, thus, face a range of protection risks such as physical violence, smuggling, child trafficking and sexual exploitation and abuse.

The lack of different types of alternative care for UASC continues to be a main challenge. Institutional care in shelters is the main type of care, with an average of 30 children per shelter, whereas it should be the last resort. Foster care, one of the preferred care options, as it provides children with stability and physical/emotional care, is mostly available to Greek children only, with the exception of a small pilot scheme for UASC (pending family reunion or reunification) run by a local NGO.

Currently, the only accommodation option provided for UASC outside of shelters, is in two specific areas known as 'safe zones'³⁶ in camp-like accommodation facilities, the latter initiated mainly as an alternative to detention. The national capacity to accommodate children in UASC shelters is less than the current needs.³⁷ Despite the

³³ UNHCR notes that there has been an attempt to integrate interpretation services upon appointment in state counseling centers for women victims of violence in Athens and Thessaloniki; however the needs of men and children survivors of SGBV cannot be addressed in these or other equivalent centers.

³⁴ See footnote 44.

³⁵ According to Article 19 of the Presidential Decree 220/2007, the Public Prosecutor for minors, and in the absence of the latter, the territorially competent First Instance Public Prosecutor, is the temporary guardian and proceeds to all the necessary arrangements for the appointment of a permanent guardian. However, the substantial role of a guardian is mostly not assigned to any appropriate person (s) as it is provided for under the international and EU standards. This results sometimes in decisions made by PPs which are not always in the child best interests.

³⁶ The available spaces are very limited for the time being (only 46 places in two facilities in Elaionas and Diavata) while standard operating procedures and minimum standards are yet not endorsed by the Greek Government.

³⁷ The total number of referrals of UASC to EKKA for accommodation in 2016 has been 4,949, whereas the total number of referrals from the 1st of January until the 10th of March 2017, has been 811. It is noteworthy that the number of referrals for accommodation in 2016 is more than double than the respective number of 2015 (2,248).

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creation of new places for UASC, 1,008 children already referred to EKKA are still waiting for their accommodation in a UASC shelter and waiting times for referral of UASC to an appropriate accommodation facility continue to be lengthy.³⁸

Pending their placement, UASC reside in camp-like accommodation facilities, in squats or other informal arrangements or are homeless in urban areas.³⁹ In addition, children may be inappropriately detained in police stations or pre-removal detention facilities (as elaborated below), often under the “protective custody” provisions. Increasing accommodation needs have led to the establishment of 939 new places in shelters for UASC,⁴⁰ while 173 places are planned in the forthcoming months.⁴¹

Access to health services

Asylum-seekers who are uninsured and destitute, have, in principle, free access to hospitals and medical care.⁴² They have been also included among the “socially vulnerable groups” who have the right to access the public healthcare and medical system of the country, according to the provisions of Art. 33 of Law 4368/2016 and the relevant ministerial decision issued.⁴³ Moreover, hospitals must accept patients when referred by doctors who provide services at the camp-like accommodation facilities.⁴⁴ In practice, however, asylum seekers do not have access to health services, as they are required to be holders of ‘Foreigner’s Insured Healthcare Card’, whose issuance is not yet implemented by the Ministry of Health.⁴⁵ Also, due to bureaucratic hurdles, asylum seekers do not always hold or experience delays in getting hold of a social security number, which could, alternatively, secure access to health care.

Education

According to the national legal framework,⁴⁶ migrant/refugee children are ‘subject to the same requirement of compulsory education as Greek nationals’ and their enrolment in schools require the same supporting documents requested for Greek nationals. Exceptionally, asylum seeking children are among beneficiaries of favorable provisions and may be enrolled with insufficient documentation. A circular of the Ministry of Education has been issued on 4.7.2016 (No 108457) reiterating the right to education and providing guidance for the enrolment of children with insufficient documentation. In 2016, the Ministry of Education committed to provide education to all refugee and migrant children in the country and enrollment has taken place in accordance with these provisions for asylum seeking children living in the urban environments. However, limited numbers of children have been enrolled and attended morning classes together with Greek pupils.⁴⁷ For refugee and migrant children hosted in the open accommodation facilities, a new law has been published in

³⁸ According to unofficial data, some UASC wait for placement in shelters even for a maximum period of seven months. Official data will be published by EKKA by April 2017.

³⁹ According to the breakdown of EKKA as of 1st of March 2017, 25% of the UASC in the waiting list are found in camp-like facilities, 18% in the RICs (of which some operate as closed facilities with regard to UAC), 2% are detained in police stations, 6% are placed in safe zones and 49% are in other informal care arrangements or homeless in urban areas.

⁴⁰ Of which 732 funded by UNHCR.

⁴¹ The total capacity of shelters for UAC as of 10 March 2017 consists of 1362 places in 53 shelters, while only 1084 places are occupied, leading to 140 vacant places. The delays in the placements can be attributed to several grounds, such as the erroneous information that EKKA receives by the RICs concerning the vulnerability and the whereabouts of the children, the fact that most separated children refuse to be placed in UAC shelters, the lengthy procedures of medical exams needed for the accommodation and the shortage in the escorts.

⁴² Art. 14 of Presidential Decree 220/2007.

⁴³ Joint Ministerial Decision No. A3(γ)/Γ.Π./ΟΙΚ 25132/2016 (O.G. 908/τ.Β'/04-04-2016).

⁴⁴ Circular of Ministry of Health, No. A3γ/Γ.Π.οικ.39364, issued on 31/5/2016.

⁴⁵ Joint Ministerial Decision No. A3(γ)/Γ.Π./ΟΙΚ 25132/2016 (OG 908/τ.Β'/04-04-2016).

⁴⁶ Law 4251/2014, Article 21, par. 7, 8.

⁴⁷ According to information shared by the Ministry of Education with UNHCR, 733 refugee/migrant children have been already enrolled and attend morning classes together with Greek children; among them they are 491 Syrian children, 86 Afghan children and 59 children from Iraq.

DH-DD(2017)584 : Rule 9.3: communication from an IGO in M.S.S. v. Belgium and Greece.
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2016⁴⁸ and joint ministerial decisions have been issued in September and October 2016⁴⁹ providing, inter alia, the establishment of afternoon reception classes for primary and secondary education of refugee children. School started gradually since October 2016, but despite Ministry's efforts not all refugee children attend formal primary and secondary education.⁵⁰

Access to the labour market for asylum-seekers

As per Art. 71 of Law 4375/2016, asylum seekers have immediate access to legal employment, after completing the procedure for lodging an application for international protection and if they are in possession of a valid "applicant for international protection card" or "asylum seeker's card"; the issuance of a separate document, a work permit, as a prerequisite for asylum-seekers to access the labour market since 1998, was abolished. The unemployment rate of 30.2% in the 4th quarter of 2016 for persons of foreign nationality, which is higher than the rate of Greek nationals (23.1%), limits in practice legal working opportunities.⁵¹ Delays in the procedure can also negatively impact on the prospects for employment of refugees.

Chapter III: Administrative detention of asylum seekers in Greece

During the last two years management of detention of persons in view of their removal as well as detention of asylum-seekers has become less restrictive in practice and in law. Following the entry into force of Art. 46 of Law 4375/2016, grounds for detention of asylum-seekers have been aligned with the provisions of the Recast Reception Conditions Directive (RRCD),⁵² while shorter maximum time limits for detention of asylum-seekers were also included in the law. According to Greek law, an asylum seeker who is not already in detention for immigration purposes, cannot lawfully be arrested and detained for these purposes, before examination of his/her asylum application is concluded. In particular, individuals who apply for international protection while in detention for pre-removal purposes or while in "restriction of liberty" in view of registration and identification procedures, are registered by the police or RIS and referred to the competent regional asylum office. After the lodging of the asylum claim, the Asylum Service may recommend the extension of detention at least until their status determination interview.⁵³

Following policy decisions publicly announced by the Alternate Minister of Citizen Protection and the Alternate Minister of Migration Policy in February 2015⁵⁴ and which UNHCR welcomed,⁵⁵ the number of detainees⁵⁶ as

⁴⁸ Law 4415/ 2016 on Intercultural Education (O.G. A' 159/06.09.2016).

⁴⁹ Joint Ministerial Decisions No 152360/ΓΔ4 (O.G. B' 3049/23.09.2016 and No 180647/ΓΔ4 (O.G. B' 3502/31.10.2016)

⁵⁰ According to information of the Ministry of Education by the end of February 2017, about 2,500 children are enrolled in afternoon classes in the mainland, while on the islands, the establishment of afternoon reception classes has not taken place.

⁵¹ See Hellenic Statistical Authority, Labour Force Survey: 4th Quarter 2016, <http://www.statistics.gr/en/statistics/-/publication/SJO01/2016-Q4>

⁵² As mentioned above, the RRCD is not transposed yet in the Greek legal framework as a whole, however, the respective provisions of the directive regulating detention have been partially transposed through Law 4375/2016.

⁵³ The Asylum Service does not recommend the detention of asylum-seekers if they present a passport or national ID as per administrative guidance or have passed through reception and identification procedures and if the claim is linked to the reasons of any status of international protection. The police may also issue a detention order, without a relevant recommendation by the Asylum Service, on the grounds that the asylum-seeker constitutes a danger to national security or public order. UNHCR has documented cases of asylum-seekers who have been detained for reasons of public order who are not given any specific or individualized justification for their detention.

⁵⁴ Joint statement of 17th February 2015.

⁵⁵ <http://www.unhcr.gr/nea/artikel/24dcef5d13ebd29a1559fc4d7339ad10/unhcr-welcomes-the-envisaged-changes.html>

⁵⁶ The detainees have been reduced from about 7.000 to few hundreds, the majority of which have been detained on the basis of constituting a risk to public order. UNHCR continues to raise its concerns regarding administrative detention on such a ground (which is not provided by the Law 3907/2011 transposing the Return Directive) as well as on the inadequate reasoning of the relevant detention orders.

well as the duration of detention were significantly reduced. These policy decisions were (a) the immediate revocation of the ministerial decision allowing for the prolongation of detention beyond 18 months, (b) the immediate release and referral to accommodation facilities of vulnerable groups, (c) the release of asylum seekers as well as persons whose detention exceeds the six months, (d) the immediate implementation of measures to substantially improve detention conditions, as well as (e) the use of alternative measures to detention. Moreover, the unprecedented increase in new arrivals in Greece with the vast majority of them coming from the top 10 refugee producing countries of the world, was accompanied in summer 2015 by legal amendments providing for the exemption of these nationalities from the issuance of deportation orders⁵⁷, and, thus, in most cases, from detention orders.

Administrative detention gradually resumed after the closure of the borders at the “Balkan-route”, mainly for newly arriving third-country nationals coming from countries with a low recognition asylum rate, and after the adoption of the March 2016 EU-Turkey Statement, when all newly irregularly arriving third-country nationals were initially detained in the RICs on the islands. Following criticism by national and international organizations and actors, as well as due to the limited capacity to maintain and run closed facilities on the islands with high numbers of populations, alternatives to detention with geographical restriction of freedom of movement on the islands started to be applied. However, reception conditions remain very poor and, persons on the islands are actually subject to the geographical restriction for almost one year now (with the exception of those referred to the regular procedure).⁵⁸

Although detention of asylum seekers cannot exceed in total a period of three months,⁵⁹ maximum detention time limits are considered in practice from the moment of the lodging of the application, and the time that the asylum-seeker is detained prior to the lodging is not taken into consideration. Thus, asylum-seekers may be detained for a total period exceeding three months. Moreover, while an ex officio judicial review of the detention order has been provided for the first time⁶⁰, in practice, asylum-seekers do not have effective access to this review due to a lack of interpretation, legal assistance and limited capacity of the Administrative Courts.

Due to the inadequate registration processes and to limited capacity,⁶¹ asylum-seekers on the mainland still face problems of access to asylum, and if not registered, face possible arrest and detention. This risk is also faced by those who arrive irregularly in a place where they cannot go through the reception and identification procedures in a RIC where they will be properly registered and have access to asylum. Moreover, new arrivals in the Evros region, including vulnerable individuals and families, despite the law provision, are detained for several weeks before their transfer to the RIC of Fylakio, due to its limited capacity.⁶²

UASC may still be found in detention, mostly while awaiting for placement in shelters. UASC may be detained either in view of return⁶³, within asylum procedures⁶⁴ or under the status of protective custody.⁶⁵ UNHCR is concerned about the the detention of UASC on the ground of “protective custody”, until their placement in a shelter. Detention of UASC in police stations is totally inappropriate. Moreover, there is no maximum duration

⁵⁷ According to Art. 78A of Law 3386/2005, in cases where the principle of *non refoulement* could be violated, persons were issued with a 6-months Certificate of Non-Removal due to humanitarian reasons. In practice, this has been largely applied for all new arrivals from refugee producing countries (Syria, Iraq, Eritrea etc), when most of them didn't apply for international protection in Greece, as long as they could continue their journey to Northern Europe.

⁵⁸ See above Chapter II.

⁵⁹ Art. 46 (4) Law 4375/2016

⁶⁰ Art. 46 (5) Law 4375/2016.

⁶¹ See above Chapter II.

⁶² Art. 14 (1) of Law 4375/2016, Art. 83 of Law 3386/2005.

⁶³ Art.21 and 30 of Law 3907/2011.

⁶⁴ Art. 46 (11) (b) Law 4375/2016.

⁶⁵ Art.118 of Presidential Decree 141/1991.

or limit set out in the law for such detention. The establishment of “safe zones” by the Ministry of Migration Policy in camp-like accommodation facilities has provided temporary alternatives to detention of UASC and shortened the period of their detention; however, the capacity of “safe zones” is currently limited. UNHCR is also concerned that due to deficiencies in the age assessment processes, UASC may be registered and detained as adults. UNHCR underlines that detention is never in the best interests of children, and as such, is contrary to the Convention on the Rights of the Child requirement that the best interests are regarded as a primary consideration in all dealings with children.

Both asylum seekers and persons in view of their removal should, in principle, be detained only in the pre-removal detention centers,⁶⁶ however, detention takes place also in detention facilities of police stations. Although there have been some improvements in the material conditions in comparison to the police stations, there is still a lack of proper maintenance. Moreover, although there have been standard operating procedures developed for the operation of the pre-removal detention centers, and mainly in Paranesti (Drama) and Xanthi have some good practices, in all pre-removal detention centers provision of services of psychosocial support, medical care and legal assistance⁶⁷ were discontinued in June 2015. Moreover, from UNHCR’s observations during monitoring visits, provision of information to all detainees in pre-removal detention facilities in a language that they understand continues to be deficient due to the lack of interpreters and translation of the administrative decisions in a language they understand. Despite the fact that access to open air and courtyards has improved in most facilities, recreation and leisure activities are still limited. Insufficient heating and cooling in some of these detention centers also affects their health.

As stated above, a high number of third-country nationals, including asylum seekers, mainly on the islands, continue to be held in detention facilities operated by the police directorates and in police stations, which are totally inappropriate for immigration detention. According to UNHCR’s observations, many lack outdoor facilities and there is usually a lack of ventilation and natural light. The conditions in these facilities are subject to constant deterioration due to overcrowding, insufficient maintenance and lack of refurbishment. In combination with the very bad hygiene conditions and lack of medical services, these facilities provide an environment which constitutes a risk to the physical and mental health of detainees.

Note on the European Commission’s Recommendation of December 2016

While outside of the scope of the Committee of Ministers supervision of the execution of the judgment in this case, for the sake of completeness and given the public nature of this document, UNHCR takes note of the European Commission’s Recommendation addressed to Member States on the resumption of transfers to Greece under the Dublin Regulation (EU) No. 604/2013.⁶⁸ In particular, UNHCR notes the recommendation proposes that transfers could resume on the basis of individual assurances from the Greek authorities as to the availability of reception places and access to asylum procedures within a reasonable timeframe. UNHCR does not oppose the recommendation that transfers could resume on the basis of individual assurances from the Greek authorities, including the exclusion of vulnerable persons from the ambit of the recommendation.

**Regional Bureau for Europe,
UNHCR
April 2017**

⁶⁶ Art. 6 (9) Law 4375/2016 and art. 31 (1) of Law 3907/2011.

⁶⁷ UNHCR provides legal assistance to asylum seekers and persons in need of international protection through GCR and through Arsis only for UASC, but the legal aid services provided are not sufficient to adequately meet the needs of detainees.

⁶⁸ https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20161208/recommendation_on_the_resumption_of_transfers_to_greece_en.pdf